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P.O. Box 302251  
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**28-S-04**



**STATE OF ALABAMA**  
Department of  
**EXAMINERS OF PUBLIC ACCOUNTS**

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June 20, 2007

Senator Larry Dixon  
Chairman, Sunset Committee  
Alabama State House  
Montgomery, AL 36130

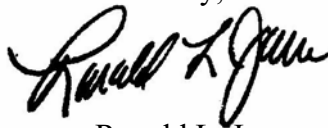
Dear Senator Dixon:

This report was prepared to provide information for use by the Sunset Committee in conducting its review and evaluation of the operations of the Board of Auctioneers in accordance with the *Code of Alabama 1975*, Section 41-20-9.

The report contains unaudited information obtained from the management, staff, and records of the Board of Auctioneers, in addition to information obtained from other sources.

Please contact me if you have any questions concerning this report.

Sincerely,

A handwritten signature in black ink, appearing to read "Ronald L. Jones", written in a cursive style.

Ronald L. Jones  
Chief Examiner

Examiners  
Glenn Davis  
Robin Hutcheson



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## **PROFILE**

### **Purpose/Authority**

The Board of Auctioneers was created by Acts of Alabama 1973, No. 811, currently codified as The ***Code of Alabama 1975***, Sections 34-4-1 through 34-4-54, to establish qualification standards and to regulate persons who engage in "bid calling" for hire to conduct auctions for the purpose of selling real estate, goods, wares, merchandise, automobiles, livestock or other things of value.

### **Characteristics**

<b>Members and Selection</b>	(8) members total – all appointed by the governor (7) auctioneer members (1) consumer member who is a resident of the state.  Each member can hold office until his or her successor is appointed.  <b><i>Code of Alabama 1975</i></b> , Section 34-4-50 (a)
<b>Term</b>	(5) years – No more than (2) consecutive terms  <b><i>Code of Alabama 1975</i></b> , Section 34-4-50 (a)
<b>Qualifications</b>	Alabama citizen for at least five (5) years prior to appointment.  Auctioneer members - Of good moral character and - Licensed by the board and - Actively engaged in the auction business for at least five (5) years prior to appointment.  <b><i>Code of Alabama 1975</i></b> , Section 34-4-50 (a)
<b>Racial Representation</b>	The board shall reflect the racial and gender composition of licensed auctioneers in the state.  <b><i>Code of Alabama 1975</i></b> , Section 34-4-50 (a)  (0) female members are serving (0) black members are serving  Note: According to the board's staff, there is one (1) Black licensee in Alabama.
<b>Geographical</b>	Each of the (7) auctioneer members must be a resident of a

<b>Representation</b>	different congressional district.  <i>Code of Alabama 1975</i> , Section 34-4-50 (a)
<b>Consumer Representation</b>	One (1) member shall be a consumer member who is a resident of the state and shall be appointed from the state at large. One (1) consumer member currently on the board. <i>Code of Alabama 1975</i> , Section 34-4-50 (a)
<b>Other Representation</b>	None
<b>Compensation</b>	Board members shall receive compensation in the amount of \$300 per day and the same per diem and travel allowance paid to state employees for each day they meet to conduct the official business of the board. <i>Code of Alabama 1975</i> , Section 34-4-53
<b><u>Operations</u></b>	
<b>Chief Executive Officer</b>	Keith Warren, Executive Director Provided under contract for administrative services with Warren and Co., Inc. Annual contract amount - \$66,000 Contract terms ends 9/30/2007
<b>Location</b>	610 South McDonough St. Montgomery, AL 36104
<b>Examinations</b>	The examination is required to test the applicant's knowledge of the following: (1) General knowledge of ethics. (2) Reading, writing and elementary arithmetic. (3) Alabama law (4) The fundamentals of auctioneering.  <i>Code of Alabama 1975</i> , Section 34-4-21 Administrative Rule AL ADC 150-X-1-.06]  The exams are developed, administered, and graded by PROV Inc. 10234 South, 2460 E. Sandy, Utah 84092  Results of Examinations

	<table><tr><th></th><th>Fiscal Year</th><th>Sat For Exam</th><th>Passed</th><th>Failed</th></tr><tr><td rowspan="4">Auctioneers</td><td>2003-2004</td><td>42</td><td>41</td><td>1</td></tr><tr><td>2004-2005</td><td>32</td><td>32</td><td>0</td></tr><tr><td>2005-2006</td><td>19</td><td>18</td><td>1</td></tr><tr><td>2003-2004</td><td>15</td><td>11</td><td>4</td></tr><tr><td rowspan="4">Apprentices</td><td>2004-2005</td><td>20</td><td>20</td><td>0</td></tr><tr><td>2005-2006</td><td>42</td><td>37</td><td>5</td><td></td></tr></table>		Fiscal Year	Sat For Exam	Passed	Failed	Auctioneers	2003-2004	42	41	1	2004-2005	32	32	0	2005-2006	19	18	1	2003-2004	15	11	4	Apprentices	2004-2005	20	20	0	2005-2006	42	37	5	
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Apprentices	2004-2005	20	20	0																													
	2005-2006	42	37	5																													
	Renewals	Licenses expire on September 30 of each year.  <i>Code of Alabama 1975</i> , Section 34-4-21(e)																															
	Licensees	Auctioneer – 895 Auctioneer Apprentice - <u>104</u> Total - 999 (as of 2/23/2007)																															
Reciprocity	No true reciprocity. However, the board may recognize a license issued by any other state to a resident of Alabama or a nonresident auctioneer or apprentice auctioneer if the other state reciprocates with Alabama in like manner and if the licensing requirements of the other state includes the passing of an examination of equal or higher standards than those required by Alabama.  <i>Code of Alabama 1975</i> , Section 34-4-25																																
Continuing Education	To be set by the board Licensees sixty-five (65) and older are exempt from the continuing education requirement.  <i>Code of Alabama 1975</i> , Section 34-4-21(f)  Six (6) clock hours of continuing education biannually, set by the board through Administrative Rule 150-X-1-.15(a)																																
Employees	None – Administrative services are provided under contract by Warren and Co., Inc.																																
Legal Counsel	Dana Billingsley																																
Subpoena Power	None provided in auctioneer licensing law																																



<b>Internet Presence</b>	<a href="http://www.auctioneer.state.al.us">www.auctioneer.state.al.us</a> The board's website contains the following information: <ul style="list-style-type: none"> <li>• Board Members</li> <li>• Board Information</li> <li>• Rules and Regulations</li> <li>• Licensing law</li> <li>• Calendar of events</li> <li>• Application forms</li> <li>• Education Providers</li> <li>• Newsletter</li> </ul> Online renewal of licenses is not available
<b>Attended Board Member Training</b>	None of the board members have attended  The executive director has attended
<b><u>Financial</u></b>	
<b>Source of Funds</b>	Licensing Fees
<b>State Treasury</b>	Yes, Special Revenue Fund 0541
<b>Unused Funds</b>	Unused funds are retained by the board.

## **SIGNIFICANT ITEMS**

### **1. A provision in the board's licensing law which requires that applicants for licensure must be United States citizens may be unconstitutional.**

The *Code of Alabama 1975*, Section 34-4-21(b) states that, "Each applicant for a license as an auctioneer shall be 19 years of age or over, and each applicant for a license as an apprentice auctioneer shall be 18 years of age or over and shall be a citizen of the United States." Enforcement of unconstitutional provisions increases the likelihood of lawsuits against the board.

The U. S. Supreme Court has ruled that exclusion from professional practice based solely on citizenship is unconstitutional. The Court in re Griffiths, 413 U. S. 717 (1973), held that exclusion of aliens from the practice of law violates the Equal Protection Clause of the Fourteenth Amendment. Also, the U. S. Supreme Court in Examining Board v. Flores De Otero, 426 U. S. 572 (1976) held that "The statutory

restriction on the ability of aliens to engage in the otherwise lawful private practice of civil engineering is plainly unconstitutional.”

SB331 of the 2007 Legislative Session corrects this discrepancy in addition to addressing other issues. The bill did not become law.

2. **The board does not deposit its funds into the state’s General Fund, as required by law.** The *Code of Alabama 1975*, Section 34-4-54 provides that, “Within 60 days following April 4, 1988, and thereafter, the board shall deposit all said funds of the board into the General Fund of the State Treasury into an account hereby established to be known as the "Board of Auctioneers Account.”

Rather than deposit its funds into the General Fund as required by law, the board deposits its funds into a separate fund created specifically to account for the operations of the Board of Auctioneers, which is the normal procedure for such licensing boards. This arrangement allows the board to retain the unobligated balance of its funds at year-end. If the board’s deposits had been made into the General Fund, as required by law, the board’s year-end unobligated balances would not have been retained by the board but would have reverted to the General Fund and would have no longer been available to the board.

SB331 of the 2007 Regular Legislative Session corrects the discrepancy by authorizing a separate fund for the board. However, the bill did not become law.

3. **The board’s offices were closed April 6, 2007 in observance of Good Friday, which was not a state holiday.** State law in the *Code of Alabama 1975*, Section 1-3-8 provides for and names the state holidays. On other days, state offices are required to be open for business. Since the contract with Warren & Company specifies that the contractor will conduct the affairs of the board in accordance with state law and regulations, the contractor is obligated to keep the board’s office open on days that are not state holidays.
4. **In the 2007 Regular Legislative Session, Senate Bill 331, sponsored by Senator Lindsey, was introduced which contains substantial changes to the auctioneers licensing law, including:**

- Addition of auctioneer firm licensing provisions
- Addition of gallery licensing provisions
- Changes in prerequisite education for licensee applicants
- Authorization to waive continuing education at the board’s discretion
- Inactive licensing
- Two-year licensing
- Additional requirements when conducting professional practice
- Changes in grounds for suspension or revocation of license
- Authority for the board to seek injunction against violators of the licensing law accompanied by authority to recover a civil penalty

- Modification of conditions surrounding appointment of board members
- Authority for the Governor to remove board members for named causes
- Change in quorum
- Authority for the board to set fees
- Changes in fees
- Clarification of the board's fund structure in the State Treasury
- Removal of financial administrative duties from the board chairman and secretary to the executive director
- Change in reciprocity provisions and fees
- Removal of the citizenship requirement for licensees

The bill did not become law.

## **STATUS OF PRIOR FINDINGS**

All prior findings have been resolved, except the following:

**1. Sixty-four percent of the complainants responding to our questionnaire stated that the Board did not resolve their complaints in a timely manner.**

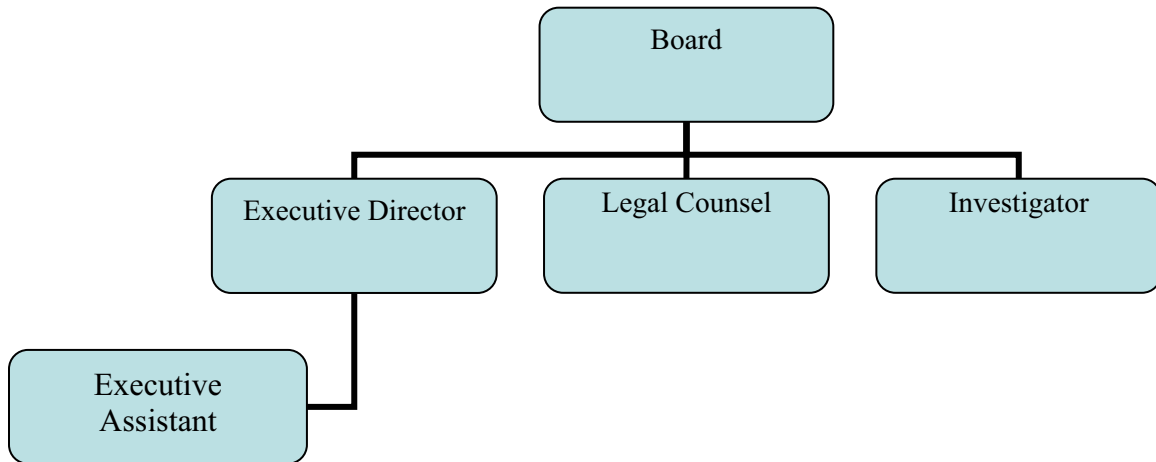
Questionnaires were sent to fifty-two (52) complainants, twenty-two (22) of whom responded. Thirteen (13) of the respondents answered "no" when asked if the board resolved their complaint in a timely manner and three (3) stated that the board did not inform them at all regarding their complaints. Fourteen (14) of the respondents stated that they were not satisfied with the board's efforts to resolve their complaint and that the board could have done more to resolve their complaint.

A review of complaint files revealed that complaints were resolved within three to fourteen months after they were received in the board's office.

**Current Status** - Questionnaires were mailed to 20 persons identified as complainants during the previous four (4) years. Of the five (5) complainants responding to the questionnaire:

- 2 indicated that the results of their complaint were not communicated to them
- 3 do not believe the board did all it could in response to their complaint
- 3 were not satisfied with their dealings with the board.

## **ORGANIZATION**



## **PERSONNEL**

There are no direct employees.

The board has contracted with Warren and Company, Inc. to provide administrative services and an executive director. Warren and Company maintains the board's records and performs administrative services for the board from its location at 610 South McDonough St. Montgomery, AL.

Current contract - \$66,000.00 annually in monthly installments of \$5,500.  
Expires September 30, 2007.

The board has also contracted with Dana Billingsley for legal services.

Contract expires on September 30, 2007.  
\$120 per hour not to exceed \$28,500 for the contract period.  
Compensated for necessary expenses up to \$1,500 for the contract period.

## **PERFORMANCE CHARACTERISTICS**

### **Number of Persons per Licensee in Alabama and Surrounding States**

	Population*	Number of Licensees	Persons Per Licensee
<b>Alabama</b>	<b>4,599,030</b>	<b>999</b>	<b>4,604</b>
Florida	18,089,888	3,193	5,666
Georgia	9,363,941	94	9,878
Mississippi	2,910,540	650	4,478
Tennessee	6,038,803	1,800	3,355

\* Source: U.S. Census July 2006 Estimate

**Operating Disbursements per Licensee (2005-2006 fiscal year)** \$133.10

**Notification to Licensees of Board decisions to Amend Administrative Rules**

“The board complied with notification procedures prescribed in the Administrative Procedure Act, which includes publication of proposed rules in the Administrative Monthly, and public hearings on proposed rules. Licensees are not specifically notified of proposed changes.”

**Complaint Resolution**

The board accepts only written complaints. According to the complaint files reviewed, complaints were resolved within three to fourteen months depending on the nature of the complaint. Some complaints were resolved by the board's investigator contacting the licensee and the board sending the licensee a letter. Other complaints required more investigation and resulted in administrative hearings. The board does not accept anonymous complaints.

COMPLAINT PROCESS	
<b><u>Receipt of Complaint</u></b>	A written complaint is mailed or faxed to the board's office. The board does not accept anonymous complaints. The executive director notifies the complainant of the receipt of the complaint
<b><u>Preliminary Investigation</u></b>	The complaint is assigned to an investigator. After the investigation is completed, the complaint is assigned to an Investigative Committee consisting of the executive director, the board's attorney and a board member representing the district where the auctioneer under investigation resides.
<b><u>Probable Cause Determination</u></b>	<p>The investigative committee, based on the results of the investigator's work, determines if sufficient probable cause exists to hold a hearing.</p> <p>The executive director notifies the complainant of the investigative committee's determination, be it no probable cause or that the complaint will be set for formal hearing.</p> <p>If a determination of probable cause is reached, the licensee is also notified of the date of the hearing. Formal hearings are held before an administrative hearing officer from the Attorney General's office.</p>

<b><u>Investigative members participation in formal hearings</u></b>	The board member who served on the investigative committee recuses himself from participation in any aspect of the hearing other than as a witness.
<b><u>Complaint Resolution (from hearing)</u></b>	No action, Negotiated settlement, Fine, Suspension or revocation of license.  The executive director notifies the complainant of the results of the hearing.

<b>Schedule of Complaints/Resolution October 1, 2002 Through September 30, 2006</b>				
<b>Fiscal</b>	<b>Complaints</b>		<b>Complaints</b>	<b>Average Resolution</b>
<b>Year</b>	<b>Filed</b>	<b>Resolved</b>	<b>Pending</b>	<b>Time (months)</b>
2003	14	11	3	11.72
2004	6	4	2	17.11
2005	2	2	0	18.92
2006	3	0	3	N/A

## **SMART BUDGETING**

*Acts of Alabama*, 2004-50 (HJR89) states, “That all state agencies and entities receiving legislative appropriations are requested to submit to the Joint Legislative Budget Committee budget proposals in performance based budget language and form. This request is applicable for proposals for the 2005-2006 fiscal year to be submitted to the 2005 Regular Session and for each succeeding fiscal year. The Director of Finance is requested to inform each public agency or entity of our desires concerning this matter.”

To comply with this request, the Director of Finance implemented a system of budgeting that requires each agency to report its performance, the system to be named SMART, an acronym for Specific, Measurable, Accountable, Responsive, and Transparent.

As a part of the SMART Budgeting system, each agency is required to submit its goals and objectives to the Department of Finance – the goals to be stated as long-term, multi-year targets which are to be achieved through accomplishment of stated objectives, which necessarily be designed so that the agency can measure annual progress toward their achievement. The SMART Budgeting system includes an Operations Plan and a Quarterly Performance Report. The performance report presents information on achievement of an agency’s annual objectives, and is one SMART Budgeting report that

presents performance information. If an agency has not included at least one objective for each goal, performance relative to that goal will not be reported. For the 2006 fiscal year, each licensing/regulatory agency was required to have at least one goal and one or more objectives directly related to the goal. Additional annual objectives were allowed without corresponding goals.

Among agencies that were not accustomed to reporting performance, we found confusion as to how to design the goals and objectives and how to differentiate between goals and objectives. Routinely we found goals with no directly related objectives. Both goals and objectives were often too abstract to be measurable, and progress toward their achievement could not be meaningfully reported. The Department of Finance is aware of these deficiencies and is taking remedial steps.

In these respects, the Board of Auctioneers was no exception. Some goals were not accompanied by directly related objectives. Some goals and objectives were abstract, and progress toward their achievement could therefore not be measured and reported.

The board's SMART Operations Plans for the 2006 and 2007 fiscal years and the SMART Quarterly Performance Report for the 2006 fiscal year are included in the appendices of this report.

The board's performance goals and objectives for 2006 and 2007 fiscal years and the examiner's comments are presented in the following table.

2006 GOALS	COMMENTS
1. To offer and administer computerized testing of applicants for licensure.	The goal is a statement of work to be done and does not address the agency's performance in carrying out the work. There is no long-term measurable target. Also, since there is no directly related objective, progress toward achieving this goal will not appear on the board's performance report.
2. To broaden public awareness through newsletters, web sites, and advertising.	The goal appears too abstract to be measured. There is no long-term measurable target. Also, since there is no directly related objective, progress toward achieving this goal will not appear on the board's performance report.
3. To complete investigations within 60 days of complaint receipt.	The goal is appropriate and measurable. There is an accompanying objective to complete a percentage of consumer complaint investigations within 60 days of complaint receipt.

<b>2006 OBJECTIVES</b>	<b>REPORTED</b>	<b>COMMENTS</b>
2. Maintain unit cost of examinations, licensing, and file maintenance.	\$143,936	There is no baseline number stated from which to determine whether the unit cost of licensing and file maintenance was maintained. The performance report, which reports total cost instead of unit cost, does not show whether progress occurred or not.
3. Complete 80% of consumer complaint investigations within 60 days of receipt.	10	The objective is measurable and has a specific target number. However, the data reported was stated as the number of complaints received rather than as the percentage of complaint investigations completed within the target period. Consequently, the data on the performance report does not report performance for the objective.

<b>2007 GOALS</b>	<b>COMMENTS</b>
G1: To offer and administer computerized testing of applicants for licensure.	This objective does not address the agency's performance, but states a method by which better performance might be achieved. Also, since there is no directly related objective, progress toward achieving this goal will not appear on the board's performance report.
G2: To broaden public awareness through newsletters, web sites, and advertising.	The goal appears too abstract to be measured. There is no stated long-term target. Also, since there is no directly related objective, progress toward achieving this goal will not appear on the board's performance report.



G3: Complete 80% of consumer complaint investigations within 60 days of receipt.	The goal is appropriate and measurable. However, since there is no directly related objective, progress toward achieving this goal will not appear on the board's performance report.
<b>2007 OBJECTIVES</b>	<b>COMMENTS</b>
Maintain unit cost of examinations, licensing, and file maintenance.	There is no baseline unit cost included in the objective statement. A target of \$165,000 is stated on the projected performance report, but the target amount on the projected report will not appear on the final performance report. Also, the target of \$165,000 is a total cost figure, not a unit cost figure. The performance report will not show whether unit cost was maintained
To operate as efficiently as possible without the possibility of a fee increase,	There is no baseline number included in the objective statement. The objective does not address the performance of any activity of the board. As in the previous goal, a target of \$165,000 is stated on the projected performance report, but the target amount will not appear on the final performance report. Also, the target of \$165,000 is a total cost figure, not measure of efficiency. The performance report will not show whether the objective was achieved.

## **REGULATION IN CONJUNCTION WITH OTHER ENTITIES**

The *Code of Alabama 1975*, Section 34-27-30 requires auctioneers of real estate to be licensees of the Alabama Real Estate Commission.

## **FINANCIAL INFORMATION**

The board operates through the State Treasury and makes its deposits and disbursements into and from Special Revenue Fund 0541. This practice is not in accordance with the requirements of the auctioneer licensing law. See the SIGNIFICANT ITEMS section of this report.

### **Schedule of Fees**

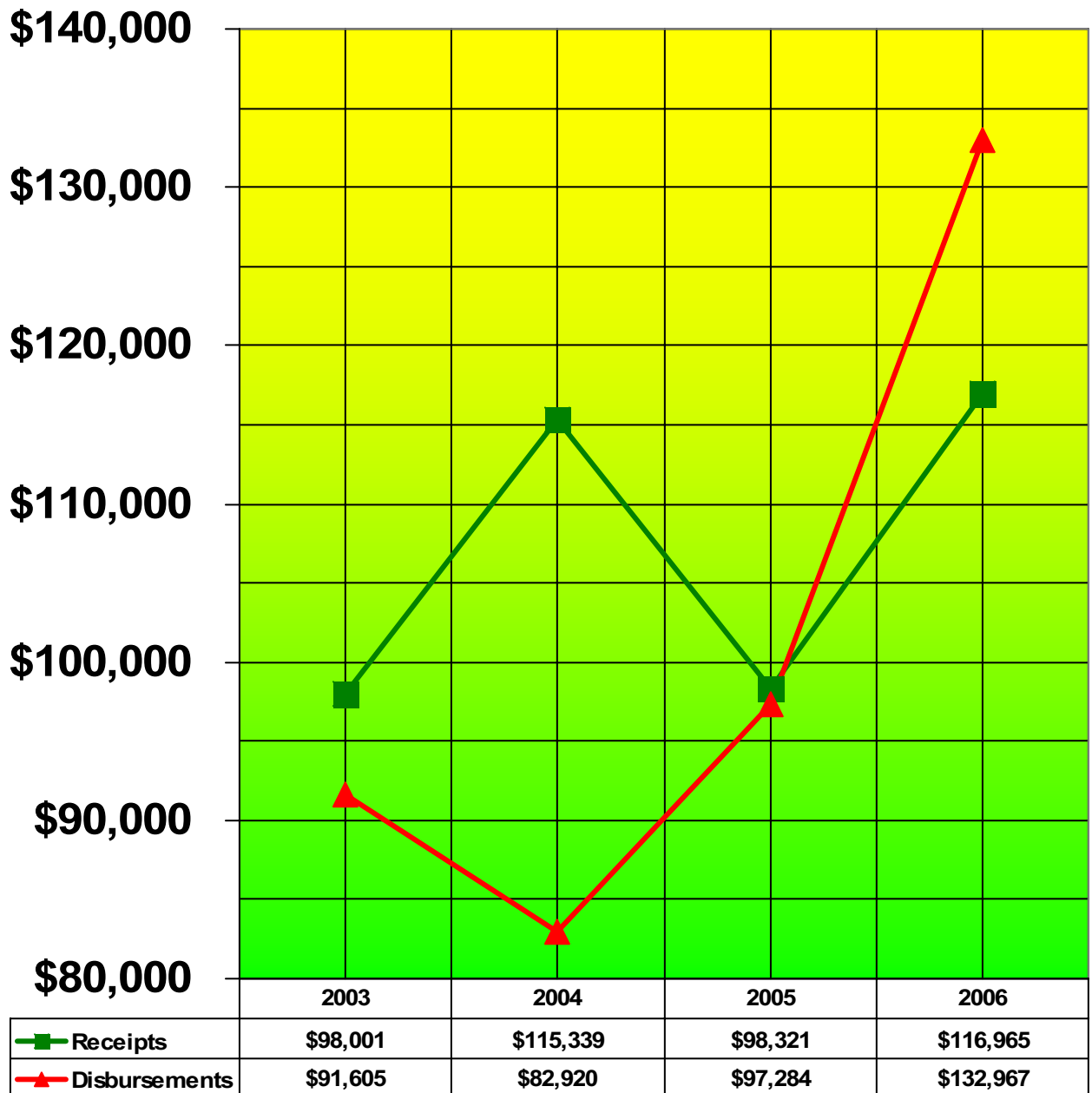
<b>Fee</b>	<b>Amount</b>	<b>Administrative Rule 150-X-1</b>	<b>Statutory Limit</b>	<b>Code of Alabama 1975,</b>
Reciprocal License	\$135	Appendix 1	Not to exceed \$150	§ 34-4-21 (a)
Apprentice License	50	Appendix 1	not to exceed 100	§ 34-4-21 (d)
Auctioneer Annual	100	Appendix 1	not to exceed 250	§ 34-4-21 (d)
Licensing Examinations	100	Appendix 1	not to exceed 100	§ 34-4-21 (a)
Change of Address	5	Appendix 1	5	§ 34-4-21 (i)
Late renewal - Apprentice	25	Appendix 1	25	§ 34-4-21 (e)
Late renewal - Auctioneer	50	Appendix 1	50	§ 34-4-21 (e)

### **Schedule of Receipts, Disbursements, and Balances**

**For the Period October 1, 2003 through September 30, 2006**

	<b>FY 2006</b>	<b>FY 2005</b>	<b>FY 2004</b>	<b>FY 2003</b>
<b><u>Receipts</u></b>				
License Fees	\$ 116,965.00	\$ 98,320.89	\$ 115,339.00	\$ 98,001.00
<b><u>Disbursements</u></b>				
Personnel	9,000.00	8,100.00	-	-
Employee Benefits	688.50	619.65	-	-
Travel-In-State	5,258.66	6,417.43	3,184.39	4,490.62
Travel Out-of-State	-	-	-	2,209.49
Rentals and Leases	2,024.00	1,710.00	876.00	882.00
Utilities and Communications	2,046.94	3,236.66	1,646.42	2,494.47
Professional Services	108,494.28	72,170.79	71,365.96	73,082.25
Supplies, Materials and Operating Expenses	5,454.27	5,029.74	5,847.72	8,446.50
<b>Total</b>	<b>132,966.65</b>	<b>97,284.27</b>	<b>82,920.49</b>	<b>91,605.33</b>
Excess (Deficiency) of Receipts Over Disbursements	(16,001.65)	1,036.62	32,418.51	6,395.67
Cash Balance at Beginning of Year	164,001.05	162,964.43	130,545.92	124,150.25
Cash Balance at End of Year	147,999.40	164,001.05	162,964.43	130,545.92
Reserved for Year-End Obligations	(24,024.12)	(25,378.66)	(16,119.42)	(7,504.22)
Unreserved Cash Balance	\$123,975.28	\$138,622.39	\$146,845.01	\$123,041.70

Operating Receipts vs. Operating Disbursements (Chart)



■ Receipts ▲ Disbursements

## **QUESTIONNAIRES**

### **Board Member Questionnaires**

Questionnaires were sent to nine (9) board members. Three (3) responded.

**1. What are the most significant issues currently facing the Board of Auctioneers and how is the Board addressing these issues?**

- 1) "Minor violations. The Board of Auctioneers have hired a well-qualified investigator, who is doing an excellent job."
- 2) "Changes to auction law was thoroughly discussed & approved by board but cannot get the Legislature to act."
- 3) "Public awareness and addressing it through education"

**2. What changes to the Board of Auctioneers laws are needed?**

- 1) "The Board of Auctioneers at present are introducing update law changes to the legislation. The Board of Auctioneers conducts continuing education Class once a year."
- 2) "Need full time investigator. Need control over auction houses (unlicensed). Need to bring unlicensed operators under control."
- 3) "The addition of firm licensees and the definition of absolute auction."

**3. Is the Board of Auctioneers adequately funded?**

3 Yes

**4. Is the Board of Auctioneers adequately staffed?**

3 Yes

**5. What is the purpose of the Board of Auctioneers year end balance of unobligated funds?**

- 1) "To maintain the Board of Auctioneers office and staff in Montgomery which is doing an outstanding job."
- 2) No response
- 3) "To provide education of both the public & licensees and the enforcement of the rules/regulations in order to protect the public."

**Licensee Questionnaires**

Questionnaires were sent to one hundred (100) licensed auctioneers. Forty-six (46) responded.

**1. Do you think regulation of your profession by the Board of Auctioneers is necessary to protect public welfare?**

42 Yes

3 No

1 No Opinion

22) “Absolutely”

43) “It is an absolute necessity. Without regulation the public would be subject to some high dollar scams.”

**2. Do you think any of the Board of Auctioneers laws, rules, and policies are an unnecessary restriction on the practice of your profession?**

11 Yes

29 No

2 Unknown

3 No Opinion

1 Not answered by respondent

14) “There was an attempt to change significant parts of the existing law without informing the Auctioneers. Wrong Move!”

24) “My business is nationwide. We need a license that is good across the U.S.”

25) Did not respond

43) “I have heard some recommended changes that would.”

**3. Do you think any of the Board of Auctioneers requirements are irrelevant to the competent practice of your profession?**

12 Yes

25 No

5 Unknown

3 No Opinion

1 Not answered by respondent

14) "Continuing Education. The requirements to teach are ludicrous for a school."

24) "Continuing education is for me as I only sell purebred cattle. No courses offered for this."

25) Did not respond

37) "Continuing education should be eliminated"

43) "With a strong board and testing program the apprentice system is unnecessary. I believe that the apprentice system is currently being used to protect some from competition. I also believe that some auctioneers are teaching questionable practices."

**4. Are you adequately informed by the Board of Auctioneers of changes to and interpretations of Board positions, policies, rules and laws?**

12 Yes

25 No

7 Unknown

3 No Opinion

14) "Seldom if ever. It appears they do only what a few desire them to do."

27) Respondent #27 answered both unknown and no opinion for this question.

43) "Proposed changes are seldom forwarded for current auctioneers review."

**5. Has the Board of Auctioneers performed your licensing and renewal in a timely manner?**

45 Yes

1 No Opinion

14) "The existing administrative contract should be put up for public bid and announced to all licensed auctioneers. Are minorities and veterans even considered for this contract?"

43) "Very good job done"

**6. Do you consider mandatory continuing education necessary for competent practice?**

19 Yes

24 No

3 No Opinion

14) "Only if there is significant change or recommended change to the law or rules."

40) "Not for auction business"

**7. Has the Board of Auctioneers approved sufficient providers of continuing education to ensure your reasonable access to necessary continuing education hours?**

26 Yes

12 No

4 Unknown

3 No Opinion

1 Not answered by respondent

14) "They are running off what few they had. Ten providers are listed. Only four in Alabama including the Board."

**8. What do you think is the most significant issue(s) currently facing your profession in Alabama and what is the Board of Auctioneers doing to address the issue(s)?**

- 2), 8), 15), and 33) "No Opinion"
- 3) "Qualified instructors who are more available."
- 7) "Added licenses requirements for cities and counties within the state."
- 9) "New auctioneers law, and it appears very little action is being taken."
- 10) "Notification of actions and proposed changes in Auction laws and regulations."
- 12) "Investigation of complaints by the public and subsequent disciplinary action when violations are confirmed."
- 14) "Their ability to regulate or control unlicensed auctioneers or to properly investigate infractions of law."
- 16) "Trying to get rid of the one man operation auctions and making it incorporate. Not needed."
- 17) "Unlicensed people performing auction business."
- 18) "Unlicensed people doing the same services without fear of penalty. Board of Auctioneers does nothing!"
- 19) "Online bidding by new Auctioneers (licensed); Minority representation on Board of Auctioneers."
- 20) "I believe the most important issue facing us today is the chain real estate companies (Remax, Caldwell Banker, Century 21) advertising that they are in the Auction business when in fact they don't have a licensed auctioneer (Broker or Salesman) on staff. They bring in a contract auctioneer from another state."
- 21) "The only suggestion I have is that the Board should work more closely with the State Auctioneers Association. Through cooperation, the two entities can have a more unified and congruent effect on the State and its policies for Auctioneers."
- 23) "Fair representation of the bidding process - false bidding"
- 24) "Don't know. Did not sell but 1 sale in Alabama in 2006. Not really aware here at home."
- 25) "Providing updates for new laws & regulations. Providing assistance with renewing licenses. If we are required to be bonded and the state provides us the updated rules and regulations continuing education should be abated."
- 26) "You should be able to sell real estate as well as personal property with a current Auction license."
- 27) "I believe Alabama should consider reciprocity with other states particularly in that 6 hours is necessary for education. Take a look! I hold many licenses, among them Georgia, Texas, and Kentucky. The laws are all so similar. Why can't CE's be reciprocal?"
- 28) "Enforcement, the bad auctioneers can get away with a lot."
- 29) "Auction misrepresentation (difficult to control)"
- 35) "Unknown"
- 40) "N/A"
- 42) "The board doesn't keep us informed on anything! Unless it's a new rule or requirement such as CEU."



43) “Not in order of importance: 1) Auctions are not being viewed by the public as professional and honest. 2) There is some thought to requiring 2 licenses with fees for both even if you are a trained and licensed auctioneer. Only one license should be required for a licensed auctioneer who if they are skilled enough to run an auction for someone else they should be skilled enough to run their own. Current regulations they must follow would protect the public. 3) Licensure and training on rules and policies should be required for a business to hold an auction using a contract auctioneer. This could be a one day class with a written test to pass. The key here is that they would be subject to the same penalties as an auctioneer and would be informed of the rules and penalties. If they choose too they could have one of their full time employees trained as a full service auctioneer and use them as their auctioneer.”

44) “The Board, from time to time, has tried to place even more cost & restrictions. They should not try to pass additional cost & laws beyond those we’ve operated (successfully) for years.”

45) “Continuing Ed is complete BS. The same repetitive crap each year. All this does is take a day out of our schedules and cost \$100 plus dollars. I would rather pay more for license and do without continuing ed.”

**9. Do you think the Board of Auctioneers and its staff are satisfactorily performing their duties?**

25 Yes

5 No

13 Unknown

3 No Opinion

14) “Apparently they are exempt from ethical standards. Rules change to fit their own needs.”

15) “I believe at least a quarterly newsletter should be sent out for updating and notifications, etc.”

43) “This is a question that could be answered yes and no. The Board is a real question mark in my opinion. Some members appear to be operating in a mode that protects their own business and not that of all auctioneers – big or small.”

**10. Has any member of the Board of Auctioneers or its staff asked for money (other than normal fees), services, or any other thing of value in return for performing a Board service for you?**

1 Yes

42 No

1 Unknown

2 No Opinion

**Additional Responses**

27) "I believe may auctioneers would firmly agree with my opinion concerning #8. It should not cost so much to keep an Alabama license by having to be in Alabama every 2 years. There are very few places to go as well. Thank you for your consideration."

**Apprentice Questionnaires**

Questionnaires were sent to one hundred (100) auctioneer apprentices. Forty-three (43) responded.

**1. Do you think regulation of your profession by the Board of Auctioneers is necessary to protect public welfare?**

35 Yes

6 No

2 No Opinion

3) "It appears individuals are auctioneers without state licenses. More inspections are necessary on site."

**2. Do you think any of the Board of Auctioneers laws, rules, and policies are an unnecessary restriction on the practice of your profession?**

14 Yes

25 No

2 Unknown

2 No Opinion

3) "It is felt that after 2 years as an apprentice with satisfactory approval by sponsor, license should be issued. Apprentice has taken exam and served 2 years under full auctioneer."

38) "Escrow or trust accounts for Auction Houses are unnecessary. The law should state any money being held over 24 hours must be put in escrow."

**3. Do you think any of the Board of Auctioneers requirements are irrelevant to the competent practice of your profession?**

12 Yes

26 No

5 No Opinion

15) "Continuing education when rules do not change"

38) “(Escrow) Auction Houses pay there sellers by the end of the sale there is no money’s to be held for any amount of time.”

**4. Are you adequately informed by the Board of Auctioneers of changes to and interpretations of Board positions, policies, rules and laws?**

21 Yes

15 No

4 Unknown

3 No Opinion

17) “I would like to receive a monthly newsletter to keep me up to date. The Website is out of date.”

38) “Auctioneers pay up to \$75.00 per year for so called continuing education but we learn the new laws and regulations of the board. Why should we have to pay to keep up with the rules and laws.”

**5. Has the Board of Auctioneers performed your licensing and renewal in a timely manner?**

43 Yes

**6. What do you think is the most significant issue(s) currently facing your profession in Alabama and what is the Board of Auctioneers doing to address the issue(s)?**

1) “Non licensing auctioneers conducting auctions – they are earning fees for auctioning without licenses

3) “Lack of onsite inspection if individuals are not licensed to do auctions in Alabama.”

6) “An owners/sellers real property rights regarding withdrawal of an absolute auction before the commencement of the bidding”

8) “Some of the larger companies are operating unethically and policing of the unethical practices are going unchecked. If the company I work for performed in the manner of the aforementioned companies all of our licenses would be terminated (not just a fine).”

9) “Finding a solution that will make owners of Auctions responsible without penalizing the Auctioneer.”

11) “I think the requirement of being an apprentice for a year needs to be abolished.”

12) “?”

13) “I have no opinion about this matter”

16) “Being able to let the license be inactive without losing them”

17) “None come to mind”

- 19) "Don't know for sure"
- 21) "Not enforcing people performing auctions without the proper license. I don't know what is being done."
- 22) "It is my belief that more involvement with the vast talent of our organization would be beneficial. Volunteers to hear 25 or so members and do a regular canvassing of their segment, and be more in touch with the kinds of business being done and the manner in which it is being carried out. Most of the contact now is only by mail and after a member has committed an infraction of the rules. It is impossible to supervise an organization of our size and complexity without close oversight and involving members closer to the business. Most, if not all of our members now have computers, and It is my opinion that most regular communications can be done by e-mail. Not all can be done this way, but more use of this media would be beneficial."
- 24) "Everything is satisfactory"
- 31) "Not aware of any issues pending at this time"
- 32) "Too many unlicensed auctioneers operating auction houses"
- 33) "No opinion"
- 34) "People wanting to file suit against us for nothing"
- 35) "Equal reciprocal licensure of other states doing business in Alabama. For example: Mississippi charging \$1500 for Alabamians to do business in Mississippi/Alabama to impose same regulations on Mississippi."
- 37) "Notification of changes in laws, rules, and policies; some of the laws, rules, and policies are irrelevant to the competent practice of the profession."
- 38) "Auctioneers should not be responsible for the Auction House and their mess ups. A firm license for the Auction House would be the answer or something for the Auctioneer to be protected from the Auction House. Why should the Auctioneer be responsible for everyone else's inexperience."
- 39) "Earning a living can be difficult and expenses in time and money are created by the board. Foreign criminals are conducting auctions in Alabama and the board is not active in preventing this."
- 42) "No Opinion"
- 43) "Do not know"

**7. Do you think the Board of Auctioneers and its staff are satisfactorily performing their duties?**

35 Yes

3 No

3 Unknown

2 No Opinion

17) "I can't get anyone to answer the phone when I call."

39) "The staff has always been helpful and quick to respond to questions regarding licenses. I'm not sure what the Board actually does."

- 8. Has any member of the Board of Auctioneers or its staff asked for money (other than normal fees), services, or any other thing of value in return for performing a Board service for you?**

43 No

**Complainant Questionnaires**

Questionnaires were sent to twenty (20) complainants. Five (5) responded.

**1. Was your complaint filed with the Board of Auctioneers by:**

3 Mail

1 Phone

3 Fax

3) Respondent # 3 indicated their complaint was filed by mail, phone, and fax

**2. Was receipt of your complaint promptly acknowledged?**

4 Yes

1 No

If yes, approximately how long after you filed your complaint were you contacted by the Board of Auctioneers?

1 Immediately

1 Within 10 days

2 Within 30 days

1 More than 30 days

**3. Was the employee who responded to your complaint knowledgeable and courteous?**

1 Knowledgeable

2 Neither

2 Both

**4. Did the Board of Auctioneers communicate the results of investigating your complaint to you?**

3 Yes

2 No

**5. Do you think the Board of Auctioneers did everything it could to resolve your complaint?**

2 Yes

3 No

**6. Were you satisfied with your dealings with the Board of Auctioneers?**

2 Yes

3 No

2) "Too slow"



## APPENDICES

### SMART Budget Reports

State of Alabama		<b>AGENCY NAME:</b> <u>Board of Auctioneers</u>		Agency No. <u>353</u>	
EBO Form No. 4b		<b>FY 2006 SMART OPERATIONS PLAN</b>		Page <u>1</u> of <u>1</u>	
		ACTUAL FY04	BUDGET FY05	BUDGET FY06	
<b>MISSION</b>	To protect the public by certifying and regulating qualified auctioneers who have the knowledge and training to conduct ethical and professional auctions. (Code-34-4-1)				
<b>VISION</b> (Optional)					
<b>VALUES</b> (Optional)					
<b>CRITICAL ISSUES</b>					
(Optional)					
Internal					
External					
<b>PROGRAM</b>	Professional and Occupational Licensing and Regulatory Board	(\$ in _____)	\$103.0	\$150.0	\$165.0
<b>ACTIVITY</b>	Certification and Regulation of Auctioneers	(\$ in _____)	\$103.0	\$150.0	\$165.0
<b>MISSION</b>					
<b>GOAL(S)</b>	To offer and administer computerized testing of applicants for licensure. To broaden public awareness through newsletters, web sites and advertising. To complete complaint investigations within 60 days of complaint receipt.				
<b>WORKLOAD</b>					
<b>CRITICAL ISSUES</b>					
Internal	To expedite the complaint/disciplinary process.				
External	To ensure that all auctioneers conducting public auctions are properly licensed.				
<b>OBJECTIVES</b>					
Spending	To increase spending by no more than 20%. (\$ in _____)				
	(\$ in _____)				
Staffing	( FTE)				
Efficiency	Maintain unit cost of examinations, licensing and file maintenance				
Quality	Complete 80% of consumer complaint investigations within 60 days of receipt				
<b>STRATEGIES</b>	To continue one board offered continuing education course per renewal period. To contract with an additional investigator to assist in investigating complaints.				

## Smart Quarterly Performance Report

Fiscal Year: 2006

Agency: 353 Auctioneers, Alabama State Board of

Org:

Program: 653 PRO AND OCCU LICENSING AND REG

Activity: 0481 LICENSE/REG OF AUCTIONEERS

Performance Measures		First Quarter		Second Quarter		Third Quarter		Fourth Quarter		Annual	
		Projected	Actual	Projected	Actual	Projected	Actual	Projected	Actual	Projected	Actual
Workload/Cost Factor	* WCF: To increase investigations and disciplinary proceedings by 10%.	3	0	3	8	3	5	3	5	12	18
		Projected	Actual	Projected	Actual	Projected	Actual	Projected	Actual	Projected	Actual
Spending	\$ SPT: To increase spending by no more than 20%.	87,450	24,313.63	25,850	22,435	25,850	35,863	25,850	25,850	165,000	143,936
		Projected	Actual	Projected	Actual	Projected	Actual	Projected	Actual	Projected	Actual
Efficiency	\$ EFT: Maintain unit cost of examinations licensing and files.	87,450	24,313.63	25,850	22,435	25,850	35,863	25,850	25,850	165,000	143,936
		Projected	Actual	Projected	Actual	Projected	Actual	Projected	Actual	Projected	Actual
Quality	* QU1: Complete 80% of consumer complaint investigations within 60 days of receipt	3	0	3	2	3	4	3	4	12	10
		Projected	Actual	Projected	Actual	Projected	Actual	Projected	Actual	Projected	Actual

How have policy decisions and budget determinations made by the governor and the legislature in the fiscal year 2005-06 affected your agency in meeting its desired accomplishments and services?

No

What administrative improvements did your agency make in fiscal year 2005-06 and what potential improvements do you foresee for future years? Include suggested changes in legislation or administrative procedures which would aid your agency in these improvements.

We successfully contracted with a professional examination vendor to provide computerized testing with multiple locations throughout the state. The Board plans to implement online renewals during the 2007FY.

## 2007 SMART Operations Plan

<b>Agency/ Org</b>	353 - Auctioneers, Alabama State Board of
<b>Organization</b>	-
<b>Program</b>	653 - PRO AND OCCU LICENSING AND REG
<b>Activity</b>	-

<b>Mission</b>	To protect the public by certifying and regulating qualified auctioneers who have the knowledge and training to conduct ethical and professional auctions.
<b>Vision</b>	
<b>Values</b>	

<b>Goals</b>
G1: To offer and administer computerized testing of applicants for licensure (GP-1)
G2: To broaden public awareness through newsletters, websites and advertising (GP-1)
G3: To complete complaint investigations within 60 days of complaint receipt (GP-1)

<b>Critical Issues</b>
<b>Internal</b> ICI1: To expedite the complaint/disciplinary process (G3)

<b>External</b> ECI1: To ensure that all auctioneers conducting public auctions are properly licensed (G2)
--

<b>Strategies</b>
1). To continue one board offered continuing education course per renewal period (G2)

Objectives								Performance Indicator
<b>Spending</b>	To maintain current level of spending.							0
<b>FY 07 Projected:</b>		165,000		<b>FY 07 Target:</b>		165,000.0		
<b>FY07 Quarterly Projections:</b>	<b>1 st Qtr:</b>	87750	<b>2nd Qtr:</b>	25750	<b>3 rd Qtr:</b>	25750	<b>4 th Qtr:</b>	25750
<b>Efficiency</b>	Maintain unit cost of examinations, licensing and file maintenance							0
<b>FY 07 Projected:</b>		165,000		<b>FY 07 Target:</b>		165,000.0		
<b>FY07 Quarterly Projections:</b>	<b>1 st Qtr:</b>	87750	<b>2nd Qtr:</b>	25750	<b>3 rd Qtr:</b>	25750	<b>4 th Qtr:</b>	25750
<b>Quality</b>	To operate as efficiently as possible without the possibility of a fee increase.							0
<b>FY 07 Projected:</b>		165,000		<b>FY 07 Target:</b>		165,000.0		
<b>FY07 Quarterly Projections:</b>	<b>1 st Qtr:</b>	87750	<b>2nd Qtr:</b>	25750	<b>3 rd Qtr:</b>	25750	<b>4 th Qtr:</b>	25750

**2007 SMART Operations Plan**

Source of Funds			
Fund Code	Fund Name	Requested FY 07	Budgeted FY 07
0541	Board of Auctioneers Fund	\$165,000	\$165,000
Total of all Funds Listed Above:		<b>\$165,000</b>	<b>\$165,000</b>

## **Statutes**

### **ARTICLE 1. GENERAL PROVISIONS.**

#### **REFERENCES**

##### **CROSS REFERENCES**

As to public auctions generally, see §§ 8-14-1 et seq.

##### **§ 34-4-1. Short title.**

(Acts 1973, No. 811, p. 1236, § 1.)

##### **§ 34-4-2. Definitions. [References](#)**

For the purposes of this chapter, the following words and phrases shall have the meanings respectively ascribed by this section:

(1) Auctioneer. Any person who has graduated from an accredited auction school and has one year's experience as an apprentice auctioneer or has two years' experience as an apprentice auctioneer in bid calling, for a fee, commission or any other valuable consideration, or with the intention or expectation of receiving the same, by the means of or process of an auction or sale at auction, offers, negotiates or attempts to negotiate a listing contract, sale, purchase or exchange of goods, chattels, merchandise, real or personal property or of any other commodity which may lawfully be kept or offered for sale by or at public auction.

(2) Board. The State Board of Auctioneers.

(3) Apprentice auctioneer. Any person who for compensation or valuable consideration or otherwise is employed, directly or indirectly, by an auctioneer to deal or engage in any activity listed in subdivision (1) of this section.

(4) Goods. Any chattels, goods, merchandise, real or personal property or commodities of any form or type which may lawfully be kept or offered for sale.

(5) Persons. Individuals, associations, partnerships and corporations, and the word "persons" shall also include the officers, directors and employees of a corporation.

(6) Auction business or Business of auctioneering. The performing of any of the acts of an auctioneer or apprentice auctioneer as defined in this section.

(Acts 1973, No. 811, p. 1236, § 2.)

#### **REFERENCES**

##### **ADMINISTRATIVE CODE**

1 Ala. Admin. Code 150-X-1-.01, Board of Auctioneers; Definitions.

##### **LIBRARY REFERENCES**

##### **Corpus Juris Secundum:**

7A C.J.S., Auctions & Auctioneers § 1.

##### **§ 34-4-3. Exemptions from chapter. [References](#)**

The provisions of this chapter and the terms "auctioneer," "apprentice auctioneer," "auction business or business of auctioneering," as defined in Section 34-4-2, shall not apply to and shall not include any person acting as a receiver, trustee in bankruptcy, guardian, administrator or executor or any such person acting under order of any court, nor shall they include a trustee acting under a trust agreement, deed of trust or will, nor shall they include sales at auction conducted by or under the direction of any public authority or pursuant to any judicial order or decree.  
(Acts 1973, No. 811, p. 1236, § 4.)

## REFERENCES

### LIBRARY REFERENCES

**American Digest System:**

Auctions and Auctioneers 3.

**Corpus Juris Secundum:**

C.J.S. Auctions and Auctioneers §§ 2-3.

#### **§ 34-4-4. Enforcement of chapter. [References](#)**

The Board of Auctioneers is hereby authorized and empowered to adopt, fix and establish all rules and regulations necessary for the proper administration and enforcement of this chapter.  
(Acts 1973, No. 811, p. 1236, § 7.)

## REFERENCES

### ADMINISTRATIVE CODE

1 Ala. Admin. Code 150-X-1-.02, Board of Auctioneers; Application for Auctioneer's License.

1 Ala. Admin. Code 150-X-1-.16, Board of Auctioneers; Board Policies and Procedures.

### LIBRARY REFERENCES

**American Digest System:**

Auctions and Auctioneers 1.

**Corpus Juris Secundum:**

C.J.S. Auctions and Auctioneers §§ 3.

#### **§ 34-4-5. Actions for collection of compensation. [References](#)**

No person engaged in the business of or acting in the capacity of an auctioneer or an apprentice auctioneer shall bring or maintain any action in the courts of this state for the collection of compensation for any services performed as an auctioneer or apprentice auctioneer without first alleging and proving that he was a duly licensed auctioneer or apprentice auctioneer at the time the alleged cause of action arose. No apprentice auctioneer shall have the right to institute an action in his own name for the recovery of a commission, fee or compensation for services as an apprentice auctioneer, but any such action shall be instituted and brought by the licensed auctioneer employing the apprentice auctioneer. Nothing contained herein shall be construed so as to prevent a licensed apprentice auctioneer from suing his employing auctioneer for any compensation, fees or commissions due him from such auctioneer.  
(Acts 1973, No. 811, p. 1236, § 20.)


## REFERENCES

### ADMINISTRATIVE CODE

1 Ala. Admin. Code 150-X-1-.02, Board of Auctioneers; Application for Auctioneer's License.

## LIBRARY REFERENCES

### American Digest System:

Auctions and Auctioneers  4, 11.

### Corpus Juris Secundum:

C.J.S. Auctions and Auctioneers §§ 4, 25.

## § 34-4-6. Limitation on authority of political subdivisions. [Historical Notes](#) [References](#)

No political subdivision of this state shall have the power or authority after September 5, 1973, to levy or collect any license tax from or to require the licensing in any manner of any auctioneer who has been licensed and bonded under this chapter in lieu of the license tax or license fee heretofore imposed by any political subdivision.

(Acts 1973, No. 811, p. 1236, § 24; Act 98-271, p. 440, § 1.)

## HISTORICAL NOTES

### HISTORY

#### Amendment notes:

**The 1998 amendment**, effective July 1, 1998, deleted "the provisions of" following "bonded under", and substituted "the" for "such" preceding "license tax".

## REFERENCES

### CROSS REFERENCES

As to authority of municipalities to regulate auctioneering and to regulate, license or prohibit sales at auction of goods, wares and merchandise or of live domestic animals in streets or other public places of the municipalities, see § 11-51-97.

## LIBRARY REFERENCES

### American Digest System:

Auctions and Auctioneers  4.

### Corpus Juris Secundum:

C.J.S. Auctions and Auctioneers § 4.

## § 34-4-7. Penalties. [Historical Notes](#) [References](#) [Annotations](#)

(a) Any person violating this chapter, shall, upon conviction, be guilty of a Class A misdemeanor, subject to a fine or imprisonment, or both.

(b) Any person, having previously been convicted for violating this chapter, who subsequently violates this chapter, shall, upon conviction for the subsequent violation, be guilty of a Class C felony, subject to a fine or imprisonment, or both.

(Acts 1973, No. 811, p. 1236, § 22; Act 98-271, p. 440, § 1.)

## HISTORICAL NOTES

### HISTORY


#### Amendment notes:

**The 1998 amendment**, effective July 1, 1998, inserted the subsection (a) designator, deleted "the provisions of" following "violating", substituted ", be guilty of a Class A misdemeanor, subject to a fine or imprisonment, or both" for "thereof, be punished by a fine of not less than \$200.00 and not more than \$500.00 or by imprisonment for a term not to exceed 90 days, or by both such fine and imprisonment, in the discretion of the court", added subsection (b), and made nonsubstantive changes.

## REFERENCES

### LIBRARY REFERENCES

**American Digest System:**

Auctions and Auctioneers  12, 13.

**Corpus Juris Secundum:**

C.J.S. Auctions and Auctioneers § 27.

## ANNOTATIONS

### CASENOTES

**Cited** in Gurley v. Blue Rents, Inc., 383 So.2d 531 (Ala.1980).

## ARTICLE 2. LICENSES.

### § 34-4-20. Required. [References](#)

It shall be unlawful for any person, partnership, association or corporation in any county of this state to act as an auctioneer or apprentice auctioneer, or directly or indirectly to engage or assume to engage in the auction business and act as either without first obtaining a license issued by the State Board of Auctioneers, under the provisions of this chapter.

It shall be unlawful for any person not licensed under the provisions of this chapter to advertise that he is in the auction business or to do anything to leave any impression upon the public that he is an auctioneer or is so engaged.

(Acts 1973, No. 811, p. 1236, §§ 3, 19.)

## REFERENCES

### ADMINISTRATIVE CODE

1 Ala. Admin. Code 150-X-1-.12, Board of Auctioneers; Non-Licensed Violations.

### LIBRARY REFERENCES

**American Digest System:**

Auctions and Auctioneers  4.

**Corpus Juris Secundum:**

C.J.S. Auctions and Auctioneers § 4.

### § 34-4-21. Application and examination; fees; expiration, renewal of licenses; continuing education; discharge of apprentice; change of address. [Historical Notes](#) [References](#)

(a) Any person desiring to enter into the auction business and obtain a license as an auctioneer or apprentice auctioneer shall make written application for a license to the board. Each application shall be accompanied by an examination fee of an amount not to exceed one hundred dollars (\$100) which shall be collected from each applicant to defray the expenses of the examination. A fee of an amount not to exceed one hundred fifty dollars (\$150) shall also be collected from each nonresident applicant, or resident licensee of another state, who seeks licensing by reciprocity. The application shall be submitted on forms prepared and furnished by the board.

(b) Each applicant for a license as an auctioneer shall be 19 years of age or over, and each applicant for a license as an apprentice auctioneer shall be 18 years of age or over and shall be a citizen of the United



States. Each applicant for an auctioneer's license shall: (1) have completed a prescribed course of study at an accredited auctioneering school approved by the board; (2) have served one year as an apprentice auctioneer under a licensed auctioneer in this state; (3) have been the principal auctioneer in at least five auctions of either real or personal property during this period of time; and (4) furnish satisfactory proof of these requirements to the board. An application shall also be accompanied by a recommendation of an employing auctioneer. If an applicant has not completed a course of study at an accredited auctioneering school, then he or she shall be required to serve two years as an apprentice under a licensed auctioneer, and shall have been the principal auctioneer in at least 10 auctions of real or personal property.

(c) Any person who files an application with the board in the proper manner shall be entitled to take an oral and written examination to determine his or her qualifications. The board shall require applicants to take and pass a written and oral examination establishing in a manner satisfactory to the board that the applicant has a general knowledge of ethics, reading, writing, spelling, elementary arithmetic, elementary principles of land economics, and a general knowledge of the statutes of this state relating to the bulk sales, auctions, brokerage, and this chapter. The examination for an auctioneer's license shall be of a more exacting nature and scope than the examination for an apprentice auctioneer. The board shall, through application and examination, determine whether the applicant is of good repute, trustworthy, honest, and competent to transact the business of an auctioneer, or of an apprentice auctioneer, in a manner that safeguards the interest of the public. The board shall require, and it shall be the responsibility of any applicant for an initial, renewal, or reciprocal license to disclose any prior felony conviction, any prior misdemeanor conviction involving moral turpitude, any pending criminal arrest of any nature except misdemeanor traffic violations, and any prior or pending disciplinary proceedings against the applicant before a board of auctioneers or real estate commission in this or any other state. All auctioneers, apprentice auctioneers, and auction firms are under a continuing duty to report to the board any and all such criminal arrests, charges, convictions, or disciplinary proceedings which they may incur, as well as any civil suits involving them. The board must receive notice of any such arrest, charge, criminal conviction, or commencement of disciplinary proceedings within 30 days of its occurrence. Notice of the commencement of any civil suit must be received by the board within 30 days after service of the complaint upon the defendant in the action.

(d) The license fee for each auctioneer shall be an amount to be determined by the board, not to exceed two hundred fifty dollars (\$250), and the license fee for each apprentice auctioneer shall be an amount to be determined by the board, not to exceed one hundred dollars (\$100). The license fees for an auctioneer shall not be increased more than twenty-five dollars (\$25) in any given year.

(e) All licenses shall expire on September 30 of each year following issuance thereof and may be renewed upon payment of the appropriate license fee as required by this chapter. Renewal of a license may be effected at any time during the months indicated preceding the date of expiration. No examination shall be required for the renewal of any license, unless the license has been revoked or suspended. If a licensee fails to renew his or her license by the deadline of each year, he or she may have his or her license renewed within 60 days after the expiration date, upon payment of the required fee and a late fee of twenty-five dollars (\$25) for apprentices and fifty dollars (\$50) for auctioneers. If a licensee elects not to pay the penalty and renew his or her license, he or she shall submit an application, pay the examination fee, and take the examination required for new licensees.

(f) The board shall adopt a program of continuing education for its licensees. No licensee shall have his or her license renewed unless, in addition to any other requirements of this chapter, the minimum annual continuing education requirements are met. The continuing education program shall not include testing or examination of the licensees in any manner. Any licensee 65 years of age or older shall be exempt from the continuing education requirement.

(g) The board shall prepare and deliver to each licensee a license certificate and pocket card. The certificate shall be displayed openly at all times in the office of the licensee. The certificate and the pocket card of the apprentice auctioneer shall contain his or her name as well as that of the auctioneer under whose supervision he or she is employed.

(h) When any auctioneer discharges an apprentice, or terminates his or her employment with the auctioneer for any reason, the auctioneer shall deliver or mail by registered or certified mail to the board the license of the discharged apprentice auctioneer. It shall be unlawful for any apprentice auctioneer to perform any of the acts contemplated by this chapter, either directly or indirectly under authority of his or her license, until the apprentice auctioneer receives a new license bearing the name and address of his or her new employer. No more than one license shall be issued to any apprentice auctioneer for the same

period of time.

(i) Written notice shall be given immediately to the board by each licensee of any change in his or her mailing address and the board shall issue a new license for the unexpired period. A change of mailing address without notification to the board shall automatically cancel the license previously issued. For changing a mailing address and issuance of a new license, the board shall collect a fee of five dollars (\$5). Each prior license shall be returned or accounted for to the board and be canceled before the issuance of the new license. The board may require other proof considered desirable with due regard to the paramount interest of the public in the issuance of the license.

(j) Pursuant to Sections 41-22-1 to 41-22-27, inclusive (the Alabama Administrative Procedure Act), the board may make and enforce any necessary and reasonable rules and regulations pursuant to the application for any license.

(Acts 1973, No. 811, p. 1236, § 11; Acts 1981, No. 81-378, p. 555, § 4; Acts 1988, No. 88-138, p. 201, § 3; Acts 1992, No. 92-119, p. 197, § 3; Act 98-271, p. 440, § 1; Act 2004-74, p. 94, § 3.)

## HISTORICAL NOTES

### HISTORY

#### Amendment notes:

**The 1998 amendment**, effective July 1, 1998, in subsection (a) substituted "an amount not to exceed one hundred dollars (\$100)" for "\$70.00", and substituted "A fee of an amount not to exceed one hundred fifty dollars (\$150) shall also" for "Also, a fee of \$90.00 shall"; deleted subsection (d) and redesignated subsections (e)-(k) as (d)-(j), respectively; in subsection (d), as so redesignated, substituted "two hundred fifty dollars (\$250)" for "\$100.00", substituted "an amount to be determined by the board, not to exceed one hundred dollars (\$100)" for "\$45.00", and deleted "\$10.00" following "more than"; in subsections (d) and (e), as so redesignated, inserted "twenty-five dollars (\$25)"; in subsection (e), as so redesignated, deleted "\$25.00" following "fee of", and substituted "fifty dollars (\$50)" for "\$50.00"; in subsection (f), as so redesignated, substituted "adopt a" for "adopt an annual", substituted "licensees. No" for "licensees not later than October 1, 1994. After that date, no", and added the final sentence; in subsection (g), as so redesignated, substituted "name" for "name and address"; in subsection (i), as so redesignated, substituted "five dollars (\$5)" for "\$5.00"; and made nonsubstantive changes.

**The 2004 amendment**, effective April 1, 2004, in subsection (a) inserted ", or resident licensee of another state,".

## REFERENCES

### ADMINISTRATIVE CODE

1 Ala. Admin. Code 150-X-1-.02, Board of Auctioneers; Application for Auctioneer's License.

1 Ala. Admin. Code 150-X-1-.05, Board of Auctioneers; Examination Days.

1 Ala. Admin. Code 150-X-1-.06, 150-X-1-.07, Board of Auctioneers; Exams, Fees.

1 Ala. Admin. Code 150-X-1-.14, Board of Auctioneers; Auctioneer Schools.

1 Ala. Admin. Code 150-X-1-.15, Board of Auctioneers; Continuing Education.

### LIBRARY REFERENCES

#### American Digest System:

Auctions and Auctioneers  4.

#### Corpus Juris Secundum:

C.J.S. Auctions and Auctioneers § 4.

### § 34-4-22. Register of applicants. [References](#)

The secretary of the board shall keep a register of all applicants for license, showing for each the date of application, name, place of business, place of residence and whether the license was granted or refused. (Acts 1973, No. 811, p. 1236, § 12.)

## REFERENCES

### LIBRARY REFERENCES

**American Digest System:**

Auctions and Auctioneers  4.

**Corpus Juris Secundum:**

C.J.S. Auctions and Auctioneers § 4.

#### **§ 34-4-23. License as evidence of rights and privileges.** [References](#)


The issuance of a license by the board shall be evidence that the person, partnership, association or corporation named therein is entitled to all the rights and privileges of an auctioneer or apprentice auctioneer while said license remains unrevoked or unexpired.

(Acts 1973, No. 811, p. 1236, § 16.)

## REFERENCES

### LIBRARY REFERENCES

**American Digest System:**

Auctions and Auctioneers  4.

**Corpus Juris Secundum:**

C.J.S. Auctions and Auctioneers § 4.

#### **§ 34-4-24. Bond required.** [References](#)

Each application for an auctioneer's or apprentice auctioneer's license shall be accompanied by a bond in the amount of \$10,000.00. The bond shall be a cash bond or a surety bond and, if the latter, shall be executed by a surety company authorized to do business in this state. The bond shall be made payable to the board and conditioned upon the applicant conducting his business in accordance with the provisions and intent of this chapter. The bond shall be in a form approved by the board. No license may be issued until such a bond has been filed with the board.

(Acts 1973, No. 811, p. 1236, § 17; Acts 1981, No. 81-378, p. 555, § 4.)

## REFERENCES

### LIBRARY REFERENCES

**American Digest System:**

Auctions and Auctioneers  5.

**Corpus Juris Secundum:**

C.J.S. Auctions and Auctioneers §§ 4, 26.

#### **§ 34-4-25. Licensing of nonresidents.** [Historical Notes](#) [References](#)

A nonresident of this state, or a resident of this state who is licensed by another state, may become an auctioneer or apprentice auctioneer in this state by conforming to this chapter, or in the case of a nonresident from a nonlicensing state, such person may be licensed provided an examination is given and passed and the person has at least five years experience in the auction business. Provided further, that if a nonresident auctioneer or apprentice auctioneer, or a resident who is licensed as an auctioneer or apprentice auctioneer in another state, has a lawsuit or other legal action filed and pending against him or her in this or any other state, the board shall not issue a license to him or her until final disposition of the action, and then

only at the discretion of the board. The terms "auctioneer" and "apprentice auctioneer" shall include any individual, firm, company, partnership, association, or corporation by whom the "auctioneer" or "apprentice auctioneer" is employed. The board may recognize a license issued by any other state to a resident of this state or a nonresident auctioneer or apprentice auctioneer if the other state reciprocates with Alabama in like manner and if the licensing requirements of the state include the passing of an examination of equal or higher standards than those required by this state. The nonresident licensee, or resident licensee of another state, shall, however, be required to secure a license from the board which shall be issued upon application therefor, accompanied by payment of the license fee required by this chapter and the filing of a certified copy of the license of the applicant issued by the other state. Every applicant shall file an irrevocable consent that actions may be commenced against the applicant in the proper court in the county in this state in which a cause of action may arise, in which the plaintiff may reside, by service of any process or pleadings authorized by laws of this state on the board, or a deputy to be designated by the board, the consent stipulating and agreeing that service of process or pleading shall be begun and held in all courts to be as valid and binding as if due service had been made upon the applicant in this state. The consent shall be duly acknowledged and, if made by a corporation, shall be authenticated by the seal of the corporation. In case of any process or pleadings mentioned in this chapter being served upon the board or upon a deputy to be designated by the board, duplicated copies shall be made, one of which shall be filed in the office of the secretary of the board, and the other immediately forwarded by registered or certified mail to the main office of the applicant against which process or pleadings are directed. No default in the proceedings or action shall be taken unless it shall be made to appear by affidavit of a member of the board, or a deputy designated by the board, that a copy of the process or pleadings was mailed to the defendant as herein required. Judgment by default shall be taken in any action or proceedings within 20 days after the date of the mailing of process or pleadings to the defendant.

(Acts 1973, No. 811, p. 1236, § 18; Acts 1981, No. 81-378, p. 555, § 4; Act 2004-74, p. 94, § 3.)

## HISTORICAL NOTES

### HISTORY

#### Amendment notes:

**The 2004 amendment**, effective April 2004, inserted ", or a resident of this state who is licensed by another state," deleted "the provisions of" following "conforming to", inserted ", or a resident who is licensed as an auctioneer or apprentice auctioneer in another state," inserted "or her" in two places, substituted "disposition of the" for "disposition of this", substituted "whom the" for "whom such", substituted "is employed." for "shall be employed.", inserted "resident of this state or a", substituted "requirements of the" for "requirements of such", substituted "The nonresident licensee, or resident licensee of another state," for "Such nonresident licensee", substituted "license of the applicant issued by the" for "applicant's license issued by such", deleted "nonresident" following "Every", substituted "against the" for "against such", substituted "the board, the" for "it, said", substituted "service of" for "said service of such", substituted "upon the" for "upon said", substituted "the corporation" for "such corporation", substituted "by the board," for "it," in two places, deleted "said" following "against which", substituted "the proceedings" for "said proceedings", deleted "such" preceding "action", deleted "such" following "mailing of", and deleted "nonresident" preceding "defendant.".

## REFERENCES

### ADMINISTRATIVE CODE

1 Ala. Admin. Code 150-X-1-.02, Board of Auctioneers; Application for Auctioneer's License.

### LIBRARY REFERENCES

#### American Digest System:

Auctions and Auctioneers  4.

#### Corpus Juris Secundum:

C.J.S. Auctions and Auctioneers § 4.

#### **§ 34-4-26. Mailing address.** [References](#)

Each licensee must have a definite mailing address such as street name and number or RFD number. A post office box only will not be sufficient.  
(Acts 1973, No. 811, p. 1236, § 19.)

## **REFERENCES**

### **LIBRARY REFERENCES**

#### **American Digest System:**

Auctions and Auctioneers  4.

#### **Corpus Juris Secundum:**

C.J.S. Auctions and Auctioneers § 4.

#### **§ 34-4-27. Privilege licenses.** [Historical Notes](#) [References](#)

Each auctioneer shall annually pay one state license in an amount not to exceed two hundred fifty dollars (\$250). Each auctioneer shall also annually pay a county license of twenty-five dollars (\$25) in each county where he or she sells by auction. No privilege license shall be required for any apprentice auctioneer when he or she is listed as the principal auctioneer. No license shall be required for any auctioneer who conducts an auction, without compensation for himself or herself, where all proceeds from the auction go to the benefit of any charitable organization. The term "auctioneer" shall include any person selling real estate, goods, wares, merchandise, automobiles, livestock, or other things of value at public outcry. Sales at public outcry may be made for compensation without license involving any of the following:

- (1) Sales for the estate of a decedent.
  - (2) Sales of property conveyed by deed of trust, mortgage, judgment, or ordered to be sold according to the mortgage, judgment, or order.
  - (3) All sales under legal process.
- (Acts 1973, No. 811, p. 1236, § 23; Act 98-271, p. 440, § 1.)

## **HISTORICAL NOTES**

### **HISTORY**

#### **Amendment notes:**

**The 1998 amendment**, effective July 1, 1998, in the first sentence inserted "annually" and substituted "in an amount not to exceed two hundred fifty dollars (\$250). Each auctioneer shall also annually pay" for "of \$50.00 and in addition", in the present second sentence substituted "twenty-five dollars (\$25)" for "\$25.00" and inserted "or she", in the present third sentence inserted "when he or she is listed as the principal auctioneer", in the present fourth sentence substituted "himself or herself," for "himself, and", substituted "from the" for "from such" and substituted "charitable" for "group or", in the present fifth sentence substituted "include" for "be deemed to apply to", substituted "automobiles," for "automobiles or" and deleted "as herein provided" following "outcry", and in the present sixth sentence substituted "Sales" for "in the following cases, sales", inserted "involving any of the following", substituted "(1) Sales for" for "sales for", substituted "(2) Sales of" for "sales of", substituted "mortgage," for "mortgage or" and substituted "(3) All" for "and all"; and made nonsubstantive changes.

## **REFERENCES**

### **LIBRARY REFERENCES**

#### **American Digest System:**

Auctions and Auctioneers  4.

**Corpus Juris Secundum:**

C.J.S. Auctions and Auctioneers § 4.

**§ 34-4-28. Authority under license not transferable; effect of license issued to corporation, association or partnership. [References](#)**

Authority to transact business as an auctioneer under any license issued by the board shall be restricted to the person named in such license and shall not inure to the benefit of any other person.

Where an auctioneer's license shall be issued to a corporation or association, authority to transact business thereunder shall be limited to one officer of such corporation or association to be designated in the application and named in the license. Each other officer of such association or corporation desiring to act as an auctioneer in connection with the business of the said association or corporation, or otherwise, shall be required to make application for and take out a separate license in his own name individually. Where the licensee is a copartnership, the license issued to such copartnership shall confer authority to act as auctioneer upon one member of such copartnership only, who shall be designated in the application and named in the license. All the other members of the copartnership desiring to act as auctioneers in connection with the business of the partnership or otherwise shall be required to apply for and take out individual licenses in their own names.

(Acts 1973, No. 811, p. 1236, § 25.)

## REFERENCES

### ADMINISTRATIVE CODE

1 Ala. Admin. Code 150-X-1-.13, Board of Auctioneers; License Name and Number Nontransferable.

### LIBRARY REFERENCES

**American Digest System:**

Auctions and Auctioneers  4.

**Corpus Juris Secundum:**

C.J.S. Auctions and Auctioneers § 4.

**§ 34-4-29. Revocation or suspension -- Procedure generally; grounds; notice and hearing required before denial, suspension or revocation; administrative fines. [References](#)**

(a) The board may revoke or suspend licenses as provided in this section.

(b) The board may, upon its own motion, and shall, upon the verified complaint in writing of any person containing evidence, documentary or otherwise, that makes out a prima facie case, investigate the actions of any auctioneer, apprentice auctioneer, or any person who assumes to act in either capacity, and hold a hearing on the complaint.

(c) The board may suspend or revoke any license which has been issued based on false or fraudulent representations. The board may also suspend or revoke the license of any licensee for any of the following acts:

- (1) Making any substantial misrepresentation.
- (2) Pursuing a continued and flagrant course of misrepresentation or making false promises through agents, advertising, or otherwise.
- (3) Accepting valuable consideration as an apprentice auctioneer for the performance of any of the acts specified in this chapter from any person other than his or her employer auctioneer.
- (4) Failing to account for or remit, within a reasonable time, any money belonging to others that comes into his or her possession, commingling funds of others with his or her own, or failing to keep funds of others in an escrow or trustee account.
- (5) Paying valuable consideration to any person for services performed in violation of this chapter.
- (6) Being convicted in a court of competent jurisdiction of this or any other state of a criminal

offense involving moral turpitude or a felony.

(7) Violation of any rule or regulation promulgated by the board.

(8) Failure to furnish voluntarily at the time of execution copies of all written instruments prepared by the auctioneer or apprentice auctioneer.

(9) Any conduct of any auctioneer which demonstrates bad faith, dishonesty, incompetency, or untruthfulness.

(10) Any conduct of any auctioneer which demonstrates improper, fraudulent, or dishonest dealings.

(11) Failing prior to the sale at public auction to enter into a written contract with the owner or consignee of any property to be sold containing the terms and conditions upon which the licensee received the property for sale.

(12) Failure by the auctioneer conducting an auction to show his or her name and state license number in the advertising of the auction.

(13) Presenting a worthless check to the board.

(d) Before denying an application for license or suspending or revoking any license, the board shall hold a hearing and shall, at least 21 days prior to the date set for the hearing, notify in writing the accused licensee of the charges made or the question to be determined, including notice of the time and place of the hearing, and afford the licensee an opportunity to be present, be heard in person or by counsel, and to offer evidence orally, or by affidavit or deposition. Written notice may be served by delivery of the notice personally to the applicant or licensee or by mailing the notice by registered or certified mail to the last known mailing address of the applicant or licensee. If the applicant or licensee is an apprentice auctioneer, the board shall also notify the auctioneer employing him or her, or whose employ he or she is about to enter, by mailing notice by registered or certified mail to the auctioneer's last known address. The hearing shall be held at a time and place prescribed by the board.

(e) In addition to the disciplinary powers granted in this section, the board may levy and collect administrative fines for serious violations of this chapter or the rules and regulations of the board of not less than \$200.00 or more than \$500.00 for each violation.

(Acts 1973, No. 811, p. 1236, § 13; Acts 1992, No. 92-119, p. 197, § 3.)

## REFERENCES

### ADMINISTRATIVE CODE

1 Ala. Admin. Code 150-X-1-.03, Board of Auctioneers; Advertisements.

1 Ala. Admin. Code 150-X-1-.12, Board of Auctioneers; Non-Licensed Violations.

### LIBRARY REFERENCES

#### American Digest System:

Auctions and Auctioneers  4.

#### Corpus Juris Secundum:

C.J.S. Auctions and Auctioneers § 4.

### § 34-4-30. Revocation or suspension -- Procedure for hearings; immunity of board. [Historical Notes](#) [References](#)

(a) The board may administer oaths and prescribe all necessary and reasonable rules for the conduct of a hearing. The board may take testimony of any person by deposition, with the same fees and mileage and in the same manner as prescribed by law in judicial procedure of courts of this state in civil cases. The fees and mileage shall be paid by the party at whose request the witness is subpoenaed.

(b) If the board determines that the licensee is guilty under this chapter, his or her license may be suspended or revoked.

(c) The affirmative vote of a majority of the board shall be necessary to revoke or suspend a license.

(d) The board is declared to be a quasi judicial body, and the members or the employees of the board are granted immunity from civil liability and shall not be liable for damages therefrom when acting in the performance of their duties as described in this chapter.

(Acts 1973, No. 811, p. 1236, § 14; Acts 1981, No. 81-378, p. 555, § 4; Act 98-271, p. 440, § 1.)

## HISTORICAL NOTES

### HISTORY


#### Amendment notes:

**The 1998 amendment**, effective July 1, 1998, designated the undesignated subsections as subsections (a) through (d); in subsection (a), as so designated, in the first sentence deleted "to" preceding "prescribe" and deleted "such" preceding "a hearing", in the first and second sentences substituted "may" for "shall have power to", in the second sentence deleted "such" preceding "person", and in the final sentence substituted "The" for "Such" and substituted "the" for "such"; in subsection (b), as so designated, substituted "determines" for "shall determine", deleted "the provisions of" following "under", inserted "or her", and deleted ", but in the event of an adverse decision, the accused shall have the right within 30 days to appeal therefrom to the circuit court of the county in which said violation may occur, where he shall be entitled to a trial de novo" following "revoked"; in subsection (d), as so designated, substituted "The board" for "The State Board of Auctioneers", substituted "the employees of the board" for "its employees thereof", inserted "and shall not be liable for damages therefrom", and deleted "good faith and in" preceding "the performance".

## REFERENCES

### LIBRARY REFERENCES

#### American Digest System:

Auctions and Auctioneers  4.

#### Corpus Juris Secundum:

C.J.S. Auctions and Auctioneers § 4.

#### **§ 34-4-31. Revocation or suspension -- Resulting from judgment in damage action.** [References](#)

Whenever any person, partnership, association or corporation claiming to have been injured or damaged by the gross negligence, incompetency, fraud, dishonesty or misconduct on the part of any licensee following the calling or engaging in the business herein described shall file an action upon such claim against such licensee in any court of record in this state and shall recover judgment thereon, such court may as part of its judgment in such case, if it deems it a proper case in which to do so, revoke the defendant's license, which shall not be reissued to such licensee except upon unanimous vote of all members of the board in favor of such reissuance and only then after the lapse of a period of 90 days from the date of such revocation.

(Acts 1973, No. 811, p. 1236, § 15.)

## REFERENCES

### LIBRARY REFERENCES

#### American Digest System:

Auctions and Auctioneers  4.

#### Corpus Juris Secundum:

C.J.S. Auctions and Auctioneers § 4.

#### **§ 34-4-32. Effect on license of apprentice auctioneer.** [References](#)

The revocation of an auctioneer's license shall automatically suspend every apprentice auctioneer's license granted to any person by virtue of his employment by the auctioneer whose license has been



revoked. The apprentice auctioneer may retain his license by transferring to the employment of another licensed auctioneer within 21 days.  
(Acts 1973, No. 811, p. 1236, § 21.)

## REFERENCES

### LIBRARY REFERENCES

**American Digest System:**

Auctions and Auctioneers  4.

**Corpus Juris Secundum:**

C.J.S. Auctions and Auctioneers § 4.

**§ 34-4-33. Revocation or suspension -- Notice of appeal; decision stayed; record and complaint filed; procedures; costs.** [Historical Notes](#) [References](#)

(a) Findings of the board with regard to the suspension or revocation of a license or the imposition of an administrative fine shall be final unless within 30 days after the date of the final order of the board, the applicant, or otherwise known as the accused, whether an individual or a corporation registered in Alabama, files a notice of appeal in the Circuit Court of Montgomery County. A party appealing a decision shall post a two hundred dollar (\$200) appeal bond with the clerk of the circuit court. The circuit clerk shall notify the board of the appeal after the clerk has approved the appellant's bond.

(b) An appeal does not act as supersedeas, but the decision of the board may be stayed by the court pending the appeal.

(c) The board shall within 30 days of service of the notice of appeal, or within the additional time as the court may allow, file the record in the case with the circuit clerk. A complaint setting forth with particularity the issues raised on appeal shall be filed with the court and served on the board by the appealing party within 30 days after the notice of appeal is filed. The action shall be conducted in accordance with the Alabama Rules of Civil Procedure.

(d) The appeal shall be conducted by the court without a jury and shall be confined to the record made before the board. The decision of the board shall be taken as prima facie just and reasonable and the court shall not substitute its judgment for that of the board as to the weight of the evidence on questions of fact. The court shall affirm or reverse, in part or in whole, or modify the decision of the board. The court may remand the case to the board for further proceedings.

(e) If the decision of the board is affirmed in whole or in part, the cost of the appeal shall be taxed against the party taking the appeal. If the decision of the board is not affirmed, the court shall tax the costs of appeal against the board.

(Act 98-271, p. 440, § 2.)

## HISTORICAL NOTES

### HISTORY

**Effective date:**

The act which added this section became effective July 1, 1998.

## REFERENCES

### LIBRARY REFERENCES

**American Digest System:**

Auctions and Auctioneers  4.

**Corpus Juris Secundum:**

C.J.S. Auctions and Auctioneers § 4.

## ARTICLE 3. BOARD OF AUCTIONEERS.

### § 34-4-50. Appointment; composition; powers and duties; expenses; seal; public records.

[Historical Notes](#)   [References](#)

(a) The Governor shall appoint a State Board of Auctioneers to be comprised of seven auctioneer members and one consumer member. Except as otherwise provided by Act 98-271, all appointments and subsequent appointments by the Governor shall be for a term of five years, with each auctioneer member appointed being a resident of a different congressional district and the consumer member being a resident of and appointed from the state at-large. Within 60 days after July 1, 1998, the Governor shall appoint one additional auctioneer member provided for herein for a term of two years and the other additional auctioneer member provided for in Act 98-271 shall be appointed by the Governor for a term of four years. Thereafter, subsequent appointments shall be for a term of five years. Appointments shall end on the anniversary date of the original appointments, except appointments to fill a vacancy which shall be for the unexpired term only. No member shall serve more than two consecutive terms of office. Each member of the board and his or her successor shall have been a resident and citizen of this state for at least five years prior to his or her appointment. Each auctioneer member of the board and his or her successor shall have been a licensed auctioneer in this state for at least five years. Each member shall hold office until his or her successor is appointed by the Governor. The board shall reflect the racial and gender composition of licensed auctioneers in the state.

(b) Each auctioneer member of the board shall be of good moral character and shall have been licensed by the board and actively engaged in the auction business for at least five years prior to the appointment.

(c) On the appointment of a new auctioneer board member, the board shall, at its next meeting, elect one of its members as chair, one member as vice-chair, one member as secretary, and any other officers deemed necessary. The board may do all things necessary and convenient for carrying into effect this chapter. The board may make bylaws, rules, and regulations not inconsistent with this chapter or other general laws of the state.

(d) Except as otherwise provided in Section 34-4-53, members of the board, board staff, and board attorneys shall receive the same per diem and travel allowance paid to state employees for each day they meet to conduct the official business of the board.

(e) The board may employ an administrator who shall be exempt from the classified service of the state, and other staff members necessary to discharge board duties and administer this chapter. The administrator shall be employed on the basis of his or her education, experience, and skills in administration and management. The board shall determine the duties and fix the compensation of the administrator and other staff members, subject to the general laws of the state.

(f) The board shall adopt a seal by which the board shall authenticate records and documents. On the seal shall be the words "State Board of Auctioneers." Copies of all records and documents in the office of the board that are duly certified and authenticated by the seal of the board shall be received in evidence in all courts equally and with the same effect as the original. All public records kept in the office of the board shall be open to public inspection during reasonable hours.

(Acts 1973, No. 811, p. 1236, § 6; Acts 1981, No. 81-378, p. 555, § 4; Acts 1988, No. 88-138, p. 201, § 3; Acts 1992, No. 92-119, p. 197, § 3; Act 98-271, p. 440, § 1; Act 2004-74, p. 94, § 3.)

## HISTORICAL NOTES

### HISTORY

#### Amendment notes:

**The 1998 amendment**, effective July 1, 1998, in subsection (a) substituted "The Governor" for "Within 30 days after September 5, 1973, the Governor", substituted "seven members. Except as otherwise provided by Act 98-271, all appointments and" for "five members, at least three of whom shall be licensed auctioneers, to begin at the next time for appointment. One member shall be appointed for a term of one year, one member for a term of two years, one member for a term of three years, one member for a term of

four years, and one member for a term of five years. All", inserted "with each member being a resident of a different congressional district.", inserted the present third and fourth sentences, substituted "Appointments shall end" for "to end", and added the final four sentences; in subsection (b) substituted "5 years" for "10 years"; in subsection (c) substituted "on the appointment of a new board member, the board shall, at its next meeting," for "The board shall meet within 30 days of the last appointment and", deleted "(to serve two years)" following "secretary", substituted "officers deemed" for "officers considered", and deleted the final three sentences; added subsections (d)-(f); and made nonsubstantive changes.

**The 2004 amendment**, effective April 1, 2004, in subsection (a) substituted "auctioneer members and one consumer member" for "members", inserted "auctioneer" following "with each", inserted "and the consumer member being a resident of and appointed from the state at-large", inserted "auctioneer" preceding "member provided" in two places, and inserted "a term of" preceding "four years."; in subsections (a) and (b) inserted "auctioneer" following "Each"; in subsection (b) substituted "five" for "5"; in subsection (c) inserted "auctioneer" following "new"; in subsection (d) substituted "Except as otherwise provided in Section 34-4-53," for "The", substituted "board staff, and board" for "its staff, and"; in subsection (e) substituted "board duties" for "its duties"; and in subsection (f) substituted "which the board" for "which it".

#### **Code Commissioner's Notes**

Acts 1992, No. 92-119, § 2 provides: "The existence and functioning of the State Board of Auctioneers, created and functioning pursuant to Sections 34-4-1 to 34-4-54, inclusive, Code of Alabama 1975, is continued, and those code sections are expressly preserved."

Acts 1996, No. 96-277, § 2 provides: "The existence and functioning of the State Board of Auctioneers, created and functioning pursuant to Sections 34-4-1 to 34-4-54, inclusive, Code of Alabama 1975, is continued, and those code sections are expressly preserved."

In 1998, the Code Commissioner in the first and second sentences of subsection (a), in order to correct a clerical error and lend clarity, deleted the language "The Governor shall appoint a State Board of Auctioneers to be comprised of seven members except as otherwise provided by this amendatory act. All appointments and subsequent appointments by the Governor shall be for a term of five years, with each member appointed being a resident of each congressional district.", and inserted instead the first and second sentences as set out in the text of the section. Also in 1998, the Code Commissioner in the third sentence of subsection (a), inserted "other" after "a term of two years and the" to correct a clerical error and to lend additional clarity to the subsection. Act 98-271 amended this section and Sections 34-4-6, 34-4-7, 34-4-21, 34-4-27, and 34-4-30, and added Section 34-4-33.

In 1998, the Code Commissioner, in the last sentence of subsection (a) inserted the word "composition" after the word "gender" to correct a clerical error.

Act 2000-140, § 2 provides: "The existence and functioning of the State Board of Auctioneers, created and functioning pursuant to Sections 34-4-1 to 34-4-54, inclusive, Code of Alabama 1975, is continued, and those code sections are expressly preserved."

Act 2004-74, § 2 provides: "The existence and functioning of the State Board of Auctioneers, created and functioning pursuant to Sections 34-4-50 to 34-4-54, inclusive, Code of Alabama 1975, is continued, and those code sections are expressly preserved."

## **REFERENCES**

### **LIBRARY REFERENCES**

#### **American Digest System:**

States 45.

#### **Corpus Juris Secundum:**

C.J.S. States §§ 79-80, 82, 136.

### **§ 34-4-51. Certificates of appointment to board; legal assistance; prosecution of complaints.**

#### **References**

Each member of the board shall receive a certificate of appointment from the Governor before entering

upon the discharge of the duties of his office. The board, or any committee thereof, shall be entitled to the services of the state Attorney General, in connection with the affairs of the board, or may, on approval of the Attorney General, employ an attorney to assist or represent it in the enforcement of this chapter before any court of competent jurisdiction, and it may take the necessary legal steps through the proper legal officers of the state to enforce the provisions of this chapter and collect the penalties provided herein. Complaints shall be prosecuted in the name of the State Board of Auctioneers.  
(Acts 1973, No. 811, p. 1236, § 5.)

## REFERENCES

### LIBRARY REFERENCES

**American Digest System:**

States 67.

**Corpus Juris Secundum:**

C.J.S. States §§ 120-121, 136-138, 140.

**§ 34-4-52. Meetings; quorum.** [Historical Notes](#) [References](#)

The board shall meet at least four times each year, in January, April, July, and October, for the purpose of transacting business as may properly come before the board. Special meetings of the board shall be held at such times as the board may provide in the bylaws the board may adopt. Four members shall constitute a quorum at a board meeting. Due notice of each meeting and the time and place thereof shall be given each member in such manner as the bylaws may provide.

(Acts 1973, No. 811, p. 1236, § 8; Act 2004-74, p. 94, § 3.)

## HISTORICAL NOTES

### HISTORY

**Amendment notes:**

**The 2004 amendment**, effective April 1, 2004, inserted a comma following "July", deleted "such" preceding "business", substituted "the board." for "it.", and substituted "the board may adopt. Four" for "it may adopt. Three"

## REFERENCES

### LIBRARY REFERENCES

**American Digest System:**

States 73.

**Corpus Juris Secundum:**

C.J.S. States §§ 130-136, 140.

**§ 34-4-53. Compensation of members.** [Historical Notes](#) [References](#)

Members of the board shall each receive compensation in an amount of three hundred dollars (\$300) per day and travel allowance as is paid to state employees for each day spent on work made necessary by this chapter.

(Acts 1973, No. 811, p. 1236, § 9; Acts 1988, No. 88-138, p. 201, § 3; Act 2004-74, p. 94, § 3.)

## HISTORICAL NOTES

## HISTORY

### Amendment notes:

**The 2004 amendment**, effective April 1, 2004, substituted "compensation in an amount of three hundred dollars (\$300) per day" for "the same per diem", and deleted "the provisions of" preceding "this".

## REFERENCES

### CROSS REFERENCES

As to travel expenses for state officers and employees, see §§ 36-7-20 et seq.

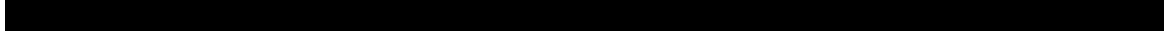
### LIBRARY REFERENCES

#### American Digest System:

States 62.

#### Corpus Juris Secundum:

C.J.S. States §§ 47, 104-107.



**§ 34-4-54. Record of proceedings; funds; audit.**

proceedings of said board. Within 60 days after September 5, 1973, it shall be the duty of the board to select a depository in the same manner and form as now provided by law and deposit all funds received by said board, and all funds thereafter collected shall be so deposited and maintained, and disbursements shall be so made on checks signed by the secretary and countersigned by the chairman. Within 60 days following April 4, 1988, and thereafter, the board shall deposit all said funds of the board into the General Fund of the State Treasury into an account hereby established to be known as the "Board of Auctioneers Account."

(Acts 1973, No. 811, p. 1236, § 10; Acts 1988, No. 88-138, p. 201, § 3.)

**SB331(2007 Legislative Session)**

87582-2

By Senator Lindsey

RFD: Governmental Affairs

First Read: 29-MAR-07

87582-2:n:03/05/2007:JRC/mfp LRS2007-255R1

**SYNOPSIS:**

Under existing law, an auctioneer may be an individual or a business entity and is subject to purchasing a state license annually. There are no specific provisions governing terms of license reciprocity and permitting an inactive status license. Additionally, certain exemptions are permitted from the licensing requirements.

Under existing law, the State Board of Auctioneers, on its own motion and upon receiving a verified complaint, may investigate a complaint and hold a hearing. The board may suspend or revoke a license for certain actions and circumstances.

This bill would provide further for licensing, would allow a state license to be purchased every two years, would provide further for reciprocity, would provide further for license fees, and would establish an inactive license status.

This bill would further empower the board to investigate actions of an

auctioneer, issue a complaint, and hold a hearing. This bill would also allow the board to suspend or revoke a license for frivolous or unfounded complaints by a licensed auctioneer. This bill would also provide for the registration and licensing of Internet auctions.

#### A BILL TO BE ENTITLED AN ACT

To amend Sections 34-4-2, 34-4-20, 34-4-21, 34-4-23, 34-4-25, 34-4-27, 34-4-28, 34-4-29, 34-4-50, 34-4-52, and 34-4-54, Code of Alabama 1975, relating to the State Board of Auctioneers and the licensing of auctioneers; to redefine the term auctioneer; to change the licensing period from one year to two years; to establish an inactive license status; to provide further for reciprocity; to allow the board to suspend or revoke a license for a pattern of frivolous, unfounded complaints; to provide for a firm license; to provide further for conducting investigations and hearings on complaints; to provide for a quorum; to add Section 34-4-28.1 to the Code of Alabama 1975, relating to the registration and licensing of Internet auctions; and to repeal Section 34-4-22, Code of Alabama 1975, relating to the register of applicants. BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

Section 1. Sections 34-4-2, 34-4-20, 34-4-21, 34-4-23, 34-4-25, 34-4-27, 34-4-28, 34-4-29, 34-4-50, 34-4-52, and 34-4-54, Code of Alabama 1975, are amended to read as follows:

"§34-4-2.

"For the purposes of this chapter, the following words and phrases shall have the following meanings ~~respectively ascribed by this section~~:

"~~(3)~~(1) APPRENTICE AUCTIONEER. Any person who for compensation or valuable consideration or otherwise is employed, directly or indirectly,



by an auctioneer to deal or engage in any activity ~~listed in subdivision (1) of this section~~  
included in conducting or in offering to conduct an auction for compensation.

"(2) AUCTION WITHOUT RESERVE. An auction in which property put up for sale is sold to the highest bidder; where no minimum price will limit the bid; where the seller may not withdraw the property from the auction and where the seller may not nullify the sale by bidding himself or herself or through an agent. "Auction without Reserve" is equivalent to the term "Absolute Auction."

"(1)(3) AUCTIONEER. Any person who has graduated from an accredited auction school and has one year's experience as an apprentice auctioneer or has two years' experience as an apprentice auctioneer in bid calling, for a fee, commission or any other valuable consideration, or with the intention or expectation of receiving the same, by the means of or process of an auction or sale at auction, offers, negotiates or attempts to negotiate a listing contract, sale, purchase or exchange of goods, chattels, merchandise, real or personal property or of any other commodity which may lawfully be kept or offered for sale by or at public auction.

"(2)(4) BOARD. The State Board of Auctioneers.

"(5) FIRM. Any person who, as part of such person's business, arranges, manages, sponsors, advertises, or contracts for auctions.

"(4)(6) GOODS. Any chattels, goods, merchandise, real or personal property or commodities of any form or type which may lawfully be kept or offered for sale.

"(5) (7) PERSON. PERSONS. Individuals, associations, partnerships and corporations, and the An individual, association, partnership, or corporation. The word "persons" shall also include the officers, directors and employees "person" includes any officer, director, or employee of a corporation.

"(6) AUCTION BUSINESS or BUSINESS OF AUCTIONEERING. The performing of any of the acts of an auctioneer or apprentice auctioneer as defined in this

section.

"§34-4-20.

"(a) It shall be unlawful for any person, ~~partnership, association or corporation~~ in any county of this state to act as an auctioneer or apprentice auctioneer, or to directly or indirectly to engage or assume to engage in the auction business and act as either without first obtaining a license issued by the ~~State Board of Auctioneers board~~, under the ~~provisions of~~ this chapter.

"(b) It shall be unlawful for any person not licensed under the ~~provisions of~~ this chapter to advertise that he or she is in the auction business or to do anything to leave any impression upon the public that he ~~or she~~ is an auctioneer or is so engaged.

"(c) It shall be unlawful for any licensed auctioneer or apprentice auctioneer to act in such capacity in the sale of real property unless such auctioneer or apprentice auctioneer shall also be licensed as a real estate broker, associate broker, or salesperson under Chapter 27.

"§34-4-21.

"(a) Any person desiring to enter into the auction business and obtain a license as an auctioneer or apprentice auctioneer shall make written application for a license to the board. Each application shall be accompanied by an examination fee of an amount ~~not to exceed one hundred dollars (\$100)~~ set by the board which shall be collected from each applicant to defray the expenses of the examination. ~~A fee of an amount not to exceed one hundred fifty dollars (\$150) shall also be collected from each nonresident applicant, or resident licensee of another state, who seeks licensing by reciprocity.~~ The application shall be submitted on forms prepared and furnished by the board.

"(b) Each applicant for a license as an auctioneer shall be 19 years of age or over, and each applicant for a license as an apprentice auctioneer shall be 18 years of age or over ~~and shall be a citizen of the United States~~. Each applicant for an

auctioneer's license shall: (1) ~~have completed a prescribed course of study at an accredited auctioneering school approved by the board~~ Have successfully graduated from an accredited high school or obtained a GED;

(2) have served one year as an apprentice auctioneer under the supervision of a licensed auctioneer in this state; and (3) have successfully completed a course of study consisting of not less than 85 hours of classroom instruction in the fundamentals of auctioneering that meets the requirements of the board; (3) ~~have been the principal auctioneer in at least five auctions of either real or personal property during this period of time; and (4) furnish satisfactory proof of these requirements to the board.~~ An application shall also be accompanied by a recommendation of an employing auctioneer. If an applicant has not successfully completed a an approved course of study at an accredited auctioneering school that meets the requirements of the board, then he or she shall be required to serve two years as an apprentice under the supervision of a licensed auctioneer, ~~and shall have been the principal auctioneer in at least 10 auctions of real or personal property in this state.~~

"(c)(1) Any person who files an a complete application with the board in the proper manner shall be entitled to take an ~~oral and written~~ examination to determine his or her qualifications. The board shall require applicants to take and pass a ~~written and oral~~ an examination establishing in a manner satisfactory to the board that the applicant has a general knowledge of ethics, reading, writing, spelling, elementary arithmetic, ~~elementary principles of land economics,~~ and a general knowledge of the statutes of this state relating to ~~the bulk sales, auctions, brokerage,~~ and this chapter. The examination for an auctioneer's license shall be of a more exacting nature and scope than the examination for an apprentice auctioneer.

"(2) The board shall, through application and examination, determine whether the applicant is of good repute, trustworthy, honest, and competent to transact the business of an auctioneer, or of an apprentice auctioneer, in a manner that

safeguards the interest of the public.

"(3) The board may deny any applicant for an apprentice auctioneer, auctioneer, or firm license the right to take an examination for a period up to two years if the applicant is found by the board to have conducted business within this state as an apprentice auctioneer, auctioneer, or firm owner without first having been properly licensed.

"(4)a. The board shall require, and it shall be the responsibility of any applicant for an initial, renewal, or reciprocal license to disclose any prior felony conviction, any prior misdemeanor conviction involving moral turpitude, any pending criminal arrest of any nature except misdemeanor traffic violations, and any prior or pending disciplinary proceedings against the applicant before a board of auctioneers or real estate commission in this or any other state.

"b. Where an applicant has been convicted of forgery, embezzlement, obtaining money under false pretenses, larceny, extortion, conspiracy to defraud, or other like offense or offenses or has been convicted of any other crime in a court of competent jurisdiction of this or any other district, state, or territory of the United States or of a foreign country, such untrustworthiness of the applicant and the conviction, in itself, may be a sufficient ground for refusal of a license.

"(5) All auctioneers, apprentice auctioneers, and auction firms are under a continuing duty to report to the board any and all such criminal arrests, charges, convictions, or disciplinary proceedings which they may incur, as well as any civil suits involving them. The board must receive notice of any such arrest, charge, criminal conviction, or commencement of disciplinary proceedings within 30 days of its occurrence. Notice of the commencement of any civil suit must be received by the board within 30 days after service of the complaint upon the defendant in the action.

"(d)(1) A person who desires a license for an auction firm shall submit an application to the board on the prescribed form. An auction firm license must be issued in

the name of the firm with a specific person acting as principal. The application shall be accompanied by a nonrefundable examination fee as set by the board and satisfactory proof of all of the following:

"a. The applicant has reached at least 19 years of age.

"b. The applicant, if not a holder of an auctioneer's license, has completed 30 hours of rigorous classroom instruction in an auctioneering-related subject approved by the board.

"c. The applicant has obtained a high school diploma or a general equivalency diploma (GED).

"(2) The board may require such other proof, through the application or otherwise, as it shall deem desirable as to the honesty, trustworthiness, integrity, reputation, and competency of the applicant.

"(3) Any person who meets these requirements shall be entitled to an examination prescribed by the board to determine such person's qualifications.

"(4) The examination for an auction firm license shall be of a more exacting nature and scope than the examination for an apprentice auctioneer's license. Notwithstanding the requirement for an examination, licensed auctioneers in good standing with the board on the effective date of this act shall not be required to take and pass an examination prescribed for an auction firm license. Auction firms meeting these criteria and having two years of documented experience in the auction industry and no record of disciplinary action taken against them by this board, and who have filed an application for an auction license with the board by the close of business on September 30, 2008, shall not be required to take and pass the examination prescribed for an auction firm license in order for a firm license to issue.

"(5) Any applicant who fails an examination must pay a fee as set by the board for each reexamination.

"(6) Any person currently holding a valid auction firm license may renew

the same by filing an application for renewal and paying the required fee before the expiration date of such firm license.

"(7) An auction firm license shall automatically be suspended if no licensed auctioneer is engaged in business on behalf of the firm. Such license may be reinstated by the board for the unexpired term upon proof that a duly licensed auctioneer has been affiliated with the firm.

"(8) Any person in this state who for a fee is in the business of managing auctions to the extent such person is responsible for the advertising, consignments, promotion, or distribution of funds must hold a valid auction firm license.

"(9) All contracts for services to be performed by an auction firm must be negotiated and signed by the principal of the firm.

"(10) The principal shall immediately notify the board in writing in the event of a change of mailing address and return the current license and pocket card to the board. The board shall reissue a license and pocket card with the new mailing address for a fee to be determined by the board.

"(11) An auction firm license holder must comply with all of the requirements of Alabama license laws and regulations that apply to all licensees.

"~~(d)~~(e) The license fee for each auctioneer and auction firm shall be an amount to be determined by the board, not to exceed ~~two hundred fifty dollars (\$250)~~ five hundred dollars (\$500) for a licensing period, and the license fee for each apprentice auctioneer shall be an amount to be determined by the board, not to exceed ~~one hundred dollars (\$100)~~ two hundred dollars (\$200) for a licensing period. The license fees for an auctioneer shall not be increased more than ~~twenty-five dollars (\$25)~~ fifty dollars (\$50) in any given year licensing period.

"~~(e)~~(f) All licenses, including auction firm licenses, shall expire on ~~September 30~~ October 31 of each the second year following issuance thereof and may be renewed upon payment of the appropriate license fee as required by this chapter. Renewal

of a license may be effected at any time during the months indicated preceding the date of expiration. No examination shall be required for the renewal of any license, unless the license has been revoked or suspended. If a licensee fails to renew his or her license by the deadline of ~~each year~~ the licensing period, he or she may have his or her license renewed within 60 days after the expiration date, upon payment of the required fee and a late fee of twenty-five dollars (\$25) for apprentices and fifty dollars (\$50) for auctioneers and auction firms. If a licensee elects not to pay the penalty and renew his or her license, he or she shall submit an application, pay the examination fee, and take the examination required for new licensees.

~~"(f)"~~(g) The board shall ~~adopt~~ provide by rule for a program of continuing education for its licensees. No licensee shall have his or her license renewed unless, in addition to any other requirements of this chapter, the minimum annual continuing education requirements are met. The continuing education program shall not include testing or examination of the licensees in any manner. Any licensee 65 years of age or older shall be exempt from the continuing education requirement. The board may waive the continuing education requirement in cases of hardship, disability, or illness, or other such circumstances as the board deems appropriate.

~~"(g)"~~(h) The board shall prepare and deliver to each licensee a license certificate and pocket card. The certificate shall be displayed openly at all times in the office of the licensee. The certificate and the pocket card of the apprentice auctioneer shall contain his or her name as well as that of the auctioneer under whose supervision he or she is employed.

~~"(h)"~~(i) When any auctioneer discharges an apprentice, or terminates his or her employment with the auctioneer for any reason, the auctioneer shall deliver or mail by registered or certified mail to the board the license of the discharged apprentice auctioneer. It shall be unlawful for any apprentice auctioneer to perform any of the acts contemplated by this chapter, either directly or indirectly under authority of his or her

license, until the apprentice auctioneer receives a new license bearing the name and address of his or her new employer. No more than one license shall be issued to any apprentice auctioneer for the same period of time.

"~~(i)~~(j) Written notice shall be given immediately to the board by each licensee of any change in his or her mailing address and the board shall issue a new license for the unexpired period. A change of mailing address without notification to the board shall automatically cancel the license previously issued. For changing a mailing address and issuance of a new license, the board shall collect a fee ~~of five dollars (\$5)~~ to be determined by the board. Each prior license shall be returned or accounted for to the board and be canceled before the issuance of the new license. The board may require other proof considered desirable with due regard to the paramount interest of the public in the issuance of the license.

"(k) An auctioneer may request that his or her license be placed on inactive status by making a request in writing and paying a fee to be determined by the board. The written request must be accompanied by the licensee's current license certificate and pocket card. The request for inactive status must be renewed every two years and the fee paid. Only licenses that are current and are in good standing with the board may be placed on inactive status. An auctioneer whose license is on inactive status may not conduct the activities of an auctioneer or principal of an auction firm.

"~~(j)~~(l) Pursuant to Sections 41-22-1 to 41-22-27, inclusive (the Alabama Administrative Procedure Act), the board may make and enforce any necessary and reasonable rules and regulations pursuant to the application for any license.

"(m) The board may establish and charge reasonable fees relating to the administration and enforcement of this chapter for application or other processing costs, on-line service, continuing education provider services, copy, mailing and filing services, or other fees as necessary to offset the licensing and processing costs.



"§34-4-23.

"The issuance of a license by the board shall be evidence that the person, ~~partnership, association or corporation~~ named therein is entitled to all the rights and privileges of an auctioneer, auction firm, or apprentice auctioneer while said license remains unrevoked or unexpired.

"§34-4-25.

"~~(a)~~ A nonresident of this state, or a resident of this state who is licensed by another state, may become an auctioneer or apprentice auctioneer in this state by conforming to this chapter, or in the case of a nonresident from a nonlicensing state, such person may be licensed provided an examination is given and passed and the person has at least five years experience in the auction business. Provided further, that if a nonresident auctioneer or apprentice auctioneer, or a resident who is licensed as an auctioneer or apprentice auctioneer in another state, has a lawsuit or other legal action filed and pending against him or her in this or any other state, the board shall not issue a license to him or her until final disposition of the action, and then only at the discretion of the board. ~~The terms "auctioneer" and "apprentice auctioneer" shall include any individual, firm, company, partnership, association, or corporation by whom the "auctioneer" or "apprentice auctioneer" is employed.~~

"(b) The board may recognize a license issued by any other state to a resident of this state or a nonresident auctioneer or ~~apprentice auctioneer~~ auction firm if the other state reciprocates with Alabama in like manner and if the licensing requirements of the state include the passing of an examination of equal or higher standards than those required by this state. The nonresident licensee, or resident licensee of another state, shall, however, be required to secure a license from the board which shall be issued upon application therefor, accompanied by payment of the license fee required by this chapter and the filing of a certified copy of the license of the applicant issued by the other state.

"(c) The board may impose any fee or licensing requirements on

applicants for licenses from a reciprocal state that the reciprocal state imposes on Alabama licensees by rule, regulation, policy, or law.

"(d) Every applicant shall file an irrevocable consent that actions may be commenced against the applicant in the proper court in the county in this state in which a cause of action may arise, in which the plaintiff may reside, by service of any process or pleadings authorized by laws of this state on the board, or a deputy to be designated by the board, the consent stipulating and agreeing that service of process or pleading shall be begun and held in all courts to be as valid and binding as if due service had been made upon the applicant in this state. The consent shall be duly acknowledged and, if made by a corporation, shall be authenticated by the seal of the corporation. In case of any process or pleadings mentioned in this chapter being served upon the board or upon a deputy to be designated by the board, duplicated copies shall be made, one of which shall be filed in the office of the secretary of the board, and the other immediately forwarded by registered or certified mail to the main office of the applicant against which process or pleadings are directed. No default in the proceedings or action shall be taken unless it shall be made to appear by affidavit of a member of the board, or a deputy designated by the board, that a copy of the process or pleadings was mailed to the defendant as herein required. Judgment by default shall be taken in any action or proceedings within 20 days after the date of the mailing of process or pleadings to the defendant.

"§34-4-27.

"Each auctioneer shall ~~annually~~ pay one state license fee every two years in an amount not to exceed ~~two hundred fifty dollars (\$250)~~ five hundred dollars (\$500). Each auctioneer shall also annually pay a county license fee of twenty-five dollars (\$25) in each county where he or she sells by auction. No privilege license shall be required for any apprentice auctioneer when he or she is listed as the principal auctioneer. No license shall be required for any auctioneer who conducts an auction, without compensation for himself or herself, where all proceeds from the auction go to the benefit of any charitable

organization. The term "auctioneer" shall include any person selling real estate, goods, wares, merchandise, automobiles, livestock, or other things of value at public outcry. Sales at public outcry may be made for compensation without license involving any of the following:

"(1) Sales for the estate of a decedent by an administrator, executor, or any such person acting under order of the court.

"(2) Sales of property conveyed by deed of trust, mortgage, judgment, or ordered to be sold according to the mortgage, judgment, ~~or~~ order, or decree.

"(3) All sales under legal process, including receiverships, bankruptcies, guardianships, and trustees acting under a trust agreement, deed of trust, or will.

"(4) Sales conducted by or under the direction of any public authority.

"§34-4-28.

"(a) Authority to transact business as an auctioneer under any license issued by the board shall be restricted to the person named in such license and shall not inure to the benefit of any other person.

"(b) Every auction firm license issued under this chapter must be associated with at least one licensed auctioneer. No licensed firm may hire an unlicensed auctioneer to provide any auction services, nor may any licensed auctioneer conduct an auction for an unlicensed firm.

~~"Where an auctioneer's license shall be issued to a corporation or association, authority to transact business thereunder shall be limited to one officer of such corporation or association to be designated in the application and named in the license. Each other officer of such association or corporation desiring to act as an auctioneer in connection with the business of the said association or corporation, or otherwise, shall be required to make application for and take out a separate license in his~~

~~own name individually. Where the licensee is a copartnership, the license issued to such copartnership shall confer authority to act as auctioneer upon one member of such copartnership only, who shall be designated in the application and named in the license. All the other members of the copartnership desiring to act as auctioneers in connection with the business of the partnership or otherwise shall be required to apply for and take out individual licenses in their own names.~~

"(c) A company owned and operated by an auctioneer licensed by the board will be exempt from the requirement for an auction firm license under this chapter.

"(d) Every licensee authorized to transact business pursuant to this chapter shall be required, in addition to the further requirements of this chapter, to:

"(1) Maintain a segregated escrow or trustee account in which funds belonging to sellers or consignees received in the course of business transacted as permitted under this chapter shall be kept separate from the licensee's own funds. Any and all funds received from sales by apprentices must be maintained in the sponsor's escrow or trust account.

"(2) Enter into a written contract with the owner or consignee of any property to be sold at public auction prior to the sale. All such contracts must clearly contain the terms and conditions upon which the licensee received the property for sale including, but not limited to, whether the auction will be conducted as absolute or with reserve, whether and by what means items may be withdrawn from sale, the sale may be cancelled and sale proceeds shall be remitted to the seller or consignee.

"(3) Provide a copy to seller or consignee of all written instruments prepared by the licensee at the time of execution. Consignment agreements must contain the name, license number, and signature of the licensee responsible for the sale.

"(4) Provide copies of the closing statements to seller or consignee giving an account of all proceeds and disbursements of the sale. Closing statements must contain

the date and location of the sale involved and the name, license number, and signature of the licensee responsible for the sale. Closing statements shall be provided within 30 days of the conclusion of the sale.

"(5) Display the name and license number of the auctioneer and auction firm conducting the auction in the advertising of the auction. In the case of an apprentice auctioneer, all such advertising must also contain the sponsor's name and state license number. Auction firms must include the name and license number of the principal auctioneer in any and all advertisements.

"(6) Ensure that all advertising accurately, truthfully, and fully discloses the nature of the auction, the items to be sold, and the terms and conditions of sale.

"(7) Maintain a current cash or surety bond as required by this chapter.

"(8) Maintain complete and accurate documents, books, and records of all transactions concerning any and all auctions. The documents, books, and records must be made available for inspection by the board or its authorized personnel or representatives upon request. Failure to produce the requested documents, books, records, or copies thereof within 30 days is grounds for disciplinary action by the board.

"(9) Assume responsibility, as sponsoring auctioneers, for the acts of their apprentices in the conduct of auction business and sales and agree to be present at the sale site and directly supervise any auction sales conducted by the apprentice.

"§34-4-29.

"(a) The board may revoke or suspend licenses as provided in this section.

"(b) The board may, upon its own motion, and shall, upon the verified complaint in writing of any person containing evidence, documentary or otherwise, that

makes out a prima facie case, investigate the actions of any auctioneer, apprentice auctioneer, auction firm license holder, or any person who assumes to act in ~~either~~ any such capacity, and hold a hearing on the complaint.

"(c) The board may suspend or revoke any license which has been issued based on false or fraudulent representations. The board may also suspend or revoke the license of any licensee for any of the following acts:

"(1) Making any substantial misrepresentation.

"(2) Pursuing a continued and flagrant course of misrepresentation or making false promises through agents, or advertising, or otherwise an auction to be an absolute auction, but conducting it as an auction with reserve or otherwise.

"(3) Accepting valuable consideration as an apprentice auctioneer for the performance of any of the acts specified in this chapter from any person other than his or her employer auctioneer.

"(4) Failing to account for or remit, within ~~a reasonable time~~ 30 days, any money belonging to others that comes into his or her possession, commingling funds of others with his or her own, or failing to keep funds of others in an escrow or trustee account.

"(5) Paying valuable consideration to any person for services performed in violation of this chapter.

"(6) Being convicted in a court of competent jurisdiction of this or any other state of a criminal offense involving moral turpitude or a felony.

"(7) Violation of any rule or regulation promulgated by the board.

"(8) Failure to furnish voluntarily at the time of execution copies of all written instruments prepared by the auctioneer or apprentice auctioneer.

"(9) Any conduct of any ~~auctioneer~~ licensee which demonstrates bad faith, dishonesty, incompetency, or untruthfulness.

"(10) Any conduct of any ~~auctioneer~~ licensee which demonstrates

improper, fraudulent, or dishonest dealings.

"(11) Having had any license to practice a business or profession revoked, suspended, annulled, or sanctioned, or otherwise having had any disciplinary action taken by any other licensing authority in this or any other state against the licensee.

~~"(11)~~(12) Failing prior to the sale at public auction to enter into a written contract with the owner or cosignee of any property to be sold containing the terms and conditions upon which the licensee received the property for sale.

~~"(12) Failure by the auctioneer conducting an auction to show his or her name and state license number in the advertising of the auction.~~

"(13) Failure to display the name and license number of the auctioneer and auction firm conducting an auction in the advertising for the auction.

~~"(13)~~(14) Presenting a worthless check to the board.

"(15) Any pattern of frivolous unfounded complaints filed with the board by a licensed auctioneer.

"(16) Knowingly making any misleading, false, or deceptive statement on any application for a license under this chapter.

"(d) Before denying an application for license or suspending or revoking any license, the board shall hold a hearing and shall, at least 21 days prior to the date set for the hearing, notify in writing the accused licensee of the charges made or the question to be determined, including notice of the time and place of the hearing, and afford the licensee an opportunity to be present, be heard in person or by counsel, and to offer evidence orally, or by affidavit or deposition. Written notice may be served by delivery of the notice personally to the applicant or licensee or by mailing the notice by registered or certified mail to the last known mailing address of the applicant or licensee. If the applicant or licensee is an apprentice auctioneer, the board shall also notify the auctioneer employing him or her, or whose employ he or she is about to enter,

by mailing notice by registered or certified mail to the auctioneer's last known address.

The hearing shall be held at a time and place prescribed by the board.

"(e) In addition to the disciplinary powers granted in this section, the board may levy and collect administrative fines for serious violations of this chapter or the rules and regulations of the board of not less than ~~\$200.00~~ five hundred dollars (\$500) or more than ~~\$500.00~~ one thousand dollars (\$1,000) for each violation.

"(f) The board may seek an injunction against any person or establishment in violation of this chapter in addition to the penalties and disciplinary powers otherwise conferred upon this board herein. In an action for an injunction, the board may demand and recover a civil penalty of fifty dollars (\$50) per day for each violation, reasonable attorney fees, and court costs.

"(g) An affirmative vote of a majority of the members of the board shall be required for any disciplinary actions against any licensee in accordance with the provisions of this chapter.

"§34-4-50.

"(a) The Governor shall appoint a State Board of Auctioneers to be comprised of seven auctioneer members and one consumer member. ~~Except as otherwise provided by Act 98-271, all~~ All appointments and subsequent appointments by the ~~Governor~~ shall be for a term of five years, with each auctioneer member appointed being a resident of a different congressional district and the consumer member being a resident of and appointed from the state at-large. ~~Within 60 days after July 1, 1998, the Governor shall appoint one additional auctioneer member provided for herein for a term of two years and the other additional auctioneer member provided for in Act 98-271 shall be appointed by the Governor for a term of four years. Thereafter, subsequent appointments shall be for a term of five years.~~ Appointments shall end on the anniversary date of the original appointments, except appointments to fill a vacancy which shall be for the unexpired term only. No member shall serve more than two consecutive terms of office.



Each member of the board and his or her successor shall have been a resident and citizen of this state for at least five years prior to his or her appointment. Each auctioneer member of the board and his or her successor shall have been a licensed auctioneer in this state for at least five years. In the event a district has no qualified candidates for appointment, the appointment may come from the state at-large. Each member shall hold office until his or her successor is appointed by the Governor. The board shall reflect the racial and gender composition of licensed auctioneers in the state.

"(b) Each auctioneer member of the board shall be of good moral character and shall have been licensed by the board and actively engaged in the auction business for at least five years prior to the appointment.

"(c) On the appointment of a new auctioneer board member, the board shall, at its next meeting, elect one of its members as chair, one member as vice-chair, one member as secretary, and any other officers deemed necessary. The board may do all things necessary and convenient for carrying into effect this chapter. The board may make bylaws, rules, and regulations not inconsistent with this chapter or other general laws of the state.

"(d) Except as otherwise provided in Section 34-4-53, members of the board, board staff, and board attorneys shall receive the same per diem and travel allowance paid to state employees for each day they meet to conduct the official business of the board.

"(e) The board may employ an administrator who shall be exempt from the classified service of the state, and other staff members necessary to discharge board duties and administer this chapter. The administrator shall be employed on the basis of his or her education, experience, and skills in administration and management. The board shall determine the duties and fix the compensation of the administrator and other staff members, subject to the general laws of the state.

"(f) The board shall adopt a seal by which the board shall authenticate

records and documents. On the seal shall be the words "State Board of Auctioneers."

Copies of all records and documents in the office of the board that are duly certified and authenticated by the seal of the board shall be received in evidence in all courts equally and with the same effect as the original. All public records kept in the office of the board shall be open to public inspection during reasonable hours.

"(g) Necessary administrative fees may be charged by the board, including, but not limited to, reasonable costs for copying, labels, and lists. All fees may be adjusted as the board shall deem appropriate.

"(h) Each board member shall be accountable to the Governor for the proper performance of his or her duties as a member of the board. The Governor shall investigate any complaints or unfavorable reports concerning the actions of the board and take appropriate action thereon, including removal of any board member for misfeasance, malfeasance, neglect of duty, commission of a felony, incompetence, or permanent inability to perform official duties. A board member may be removed at the request of the board for failing to attend three consecutive properly noticed meetings.

"(i) Members of the board are immune from liability for all good faith acts performed in the exercise of their duties as members of the board.

"§34-4-52.

"The board shall meet ~~at least four times each year, in January, April, July, and October,~~ quarterly for the purpose of transacting business as may properly come before the board. Special meetings of the board shall be held at such times as the board may provide in the bylaws the board may adopt. ~~Four~~ A majority of the currently appointed board members shall constitute a quorum at a board meeting. Due notice of each meeting and the time and place thereof shall be given each member in such manner as the bylaws may provide.

"§34-4-54.

"The secretary of the board shall keep a record of the proceedings of said

~~the board. Within 60 days after September 5, 1973, it shall be the duty of the board to select a depository in the same manner and form as now provided by law and deposit all funds received by said board, and all funds thereafter collected shall be so deposited and maintained, and disbursements shall be so made on checks signed by the secretary and countersigned by the chairman. Within 60 days following April 4, 1988, and thereafter, the board shall deposit all said funds of the board into the General Fund of the State Treasury into an account hereby established to be known as the "Board of Auctioneers Account."~~ There is hereby established a separate fund in the State Treasury to be known as the "Alabama State Board of Auctioneers Fund." All money derived under this chapter shall be deposited in this fund and used only to carry out this chapter. Such fund shall be paid out only by warrant of the Comptroller under the treasurer, upon itemized vouchers, approved by the executive director of the board."

Section 2. Section 34-4-28.1 is added to the Code of Alabama 1975, to read as follows:

§34-4-28.1. Registration of Internet Auction Listing Service.

(a) For the purposes of this section, the following terms shall have the following meanings:

(1) INTERACTIVE COMPUTER SERVICE. Any information service, system, or access software provider that provides or enables computer access by multiple users to a computer server, including specifically a service or system that provides access to the Internet.

(2) INTERNET AUCTION LISTING SERVICE. A website on the Internet or other interactive computer service that is designed to allow or advertised as a means of allowing users to offer goods or services for sale or lease to a prospective buyer or lessee through an on-line bid submission process using that website or interactive computer

service and that does not in any way utilize the services of a natural person as an auctioneer.

(b) It is unlawful for any person, corporation, limited liability company, partnership, or other entity to provide an Internet auction listing service in the State of Alabama for compensation without being registered with the Alabama State Board of Auctioneers when any of the following occur:

(1) The person, corporation, limited liability company, partnership, or other entity providing the Internet auction listing service is located in the State of Alabama.

(2) The prospective seller or seller, prospective lessor or lessor, or prospective purchaser or purchaser is located in the State of Alabama and is required to agree to terms with the person, corporation, limited liability company, partnership, or other entity providing the Internet auction listing service, no matter where that person, corporation, limited liability company, partnership, or other entity is located.

(3) The goods or services offered for sale or lease are located or will be provided in the State of Alabama.

(c) Any person, corporation, limited liability company, partnership, or other entity that provides an Internet auction listing service in the State of Alabama for compensation under any of the circumstances listed in subsection (b) shall register with the board on forms provided by the board, accompanied by the required fee as provided by rule. Such registration shall include information as required by the board and established by rule as the board deems necessary to enable users of the Internet auction listing service in Alabama to identify the entity providing the service and to seek redress or further information from such entity. The fee shall be sufficient to cover the reasonable costs of

the board in administering and enforcing the

provisions of this section. The registrant shall be required to certify all of the following:

(1) That the registrant does not act as the agent of users who sell items on its website and acts only as a venue for user transactions.

(2) That the registrant requires sellers and bidders to register with the website and provide their name, address, telephone number, and e-mail address.

(3) That the registrant retains such information for a period of at least two years.

(4) That the registrant retains transactional information consisting of at least seller identification, high bidder identification, and item sold for at least two years from the close of a transaction, and has a mechanism to identify all transactions involving a particular seller or buyer.

(5) That the registrant has a mechanism to receive complaints or inquiries from users.

(6) That the registrant adopts and reasonably implements a policy of suspending, in appropriate circumstances, the accounts of users who, based on the registrant's investigation, are proven to have engaged in a pattern of activity that appears to be deliberately designed to defraud consumers on the registrant's website.

(7) That the registrant will comply with board and law enforcement requests for stored data in its possession, subject to the requirements of applicable law.

(d) The board may refuse to accept a registration which is incomplete or not accompanied by the required fee. The board may impose a civil penalty not to exceed ten thousand dollars (\$10,000) upon any Internet auction listing service that intentionally fails to register as required by this section, and may impose such penalty or revoke, suspend, or place on probation or administrative supervision the registration of any Internet auction

listing service that does any of the following:

- (1) Intentionally makes a false or fraudulent material representation or material misstatement or misrepresentation to the board in connection with its registration, including in the certification required under subsection (c).
- (2) Is convicted of any crime, an essential element of which is dishonesty, fraud, larceny, embezzlement, or obtaining money, property, or credit by false pretenses or by means of a confidence game; or is convicted in this or another state of a crime that is a felony under the laws of this state; or is convicted of a felony in a federal court.
- (3) Is adjudged to be a person under legal disability or subject to an adjudication of incompetency in any court of competent jurisdiction.
- (4) Has been subject to discipline by another state, the District of Columbia, a territory of the United States, a foreign nation, a governmental agency, or any other entity authorized to impose discipline if at least one of the grounds for that discipline is the same as or equivalent to one of the grounds for discipline set forth in this section or for failing to report to the board, within 30 days, any adverse final action taken against the registrant by any other licensing or registering jurisdiction, government agency, law enforcement agency, or court, or liability for conduct that would constitute grounds for action as set forth in this section.
- (5) Fails to make available to board personnel during normal business hours all records and related documents maintained in connection with the activities subject to registration under this section.
- (6) Makes or files false records or reports in connection with activities subject to registration, including, but not limited to, false records or reports filed with state

agencies.

(7) Fails to provide information within 30 days in response to a written request made by the board to a person designated in the registration for receipt of such requests.

(8) Fails to perform any act or procedure described in subsection (c) of this section.

(e) Registrations issued pursuant to this section shall expire on September 30 every two years. A registrant shall submit a renewal application to the board on forms provided by the board, along with the required fee as established by rule.

(f) Operating an Internet auction listing service under any of the circumstances listed in subsection (b) without being currently registered under this section is declared to be adverse to the public welfare, to constitute a public nuisance, and to cause irreparable harm to the public welfare. The board, the Attorney General, a district attorney, or any other person may maintain an action and apply for injunctive relief in any circuit court to enjoin the person or entity from engaging in such practice.

(g) This chapter applies to any actions of the board exercising its authority under subsection (d) as if a person required to register under this section were a person holding or claiming to hold a license under this chapter.

(h) The board may adopt such rules as may be necessary to implement or interpret the provisions of this section.

Section 3. The board may deny any applicant for an apprentice or auctioneer firm license the right to take an examination or reciprocate for a period up to two years if the applicant is found by the board to have conducted business within this state as an apprentice auctioneer, auctioneer, or firm owner without first having been properly licensed.

Section 4. The State Board of Auctioneers is subject to the provisions of the Alabama Sunset Law of 1981. The board shall automatically terminate on October 1, 2008, and every four years thereafter, unless a bill is passed that it be continued, modified, or reestablished.

1 Section 5. Section 34-4-22, Code of Alabama 1975, is 2 repealed. 3 Section 6. This act shall become effective 4 immediately following its passage and approval by the 5 Governor, or its otherwise becoming law.



## ***Board Members***

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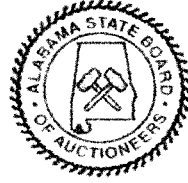
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**Agency Response to Significant Items**

# ALABAMA STATE BOARD OF AUCTIONEERS

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June 6, 2007

John E. Norris  
Director, Operational Division  
Department of Examiners of Public Accounts  
State of Alabama  
Post Office Box 302251  
Montgomery, AL 36130-2251

Dear Mr. Norris:

Attached are responses to each of the significant items identified by the Department of Public Accounts submitted in the Department's letter dated May 31, 2008. The Board of Auctioneers understands these significant items will appear in the Department's report to the Sunset Committee. We hope that this response provides sufficient information. Thank you for your assistance and cooperation in this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Keith E. Warren", with a long, sweeping horizontal line extending to the right.

Keith E. Warren  
*Executive Director*

## **Responses to Significant Items**

**1. A provision in the board's licensing law which requires that applicants for licensure must be United State citizens may be unconstitutional.**

Response: The Board did introduce legislation (SB 331) during the 2007 Legislative Session however, was unsuccessful in its passage. The Board will continue to introduce this legislation to correct this matter.

**2. The board does not deposit its funds into the state's General Fund, as required by law.**

Response: The Board will continue to introduce this legislation to correct this matter. The Board has deposited money into its fund since the statutory change in 1988.

**3. The board's offices were closed April 6, 2007 in observance of Good Friday, which was not a state holiday.**

Response: Warren & Company, Inc. has observed Good Friday as a holiday since its inception in 1997. This matter will be addressed and corrected in the future.

**4. In the 2007 Regular Legislative Session, Senate Bill 331, sponsored by Senator Lindsey, was introduced which contains substantial changes to the auctioneers licensing law.**

Response: The Board has introduced legislation in the last several legislative sessions to extensively change the current Auctioneer Law. The Board does feel these changes are necessary to ensure efficient operation of the Board, to obtain additional authority to investigate complaints regarding auction businesses, increase disciplinary action and fines and various other changes recommended by the Sunset Committee in previous audits.

## **STATUS OF PRIOR FINDINGS**

**1. Sixty-four percent of the complainants responding to our questionnaire stated that the Board did not resolve their complaints in a timely manner.**

Response: The Board did have difficulties with maintaining an investigator which did result in a back log in investigations and disciplinary actions. The Board has handled all of its cases as of this date. The Board is limited in its power when dealing with unlicensed individuals and has no current jurisdiction over auction firms or businesses. The Board does everything within its power to handle violations of the Alabama Auctioneers Law but unfortunately, these actions do not always satisfy the complainant.